

VOL. XIII

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

-----  
UNITED STATES OF AMERICA

-vs-

10-CR-219S

TONAWANDA COKE CORPORATION  
MARK L. KAMHOLZ,

Defendants.  
-----

Proceedings held before the  
  
Honorable William M. Skretny, U.S.  
  
Courthouse, 2 Niagara Circle, Buffalo,  
  
New York on March 15, 2013.

APPEARANCES:

AARON J. MANGO,  
Assistant United States Attorney,  
ROCKY PIAGGIONE, Senior Counsel,  
U.S. Department of Justice,  
Appearing for the United States.

GREGORY F. LINSIN, ESQ.,  
JEANNE M. GRASSO, ESQ.,  
ARIEL S. GLASNER, ESQ.,  
Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,  
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal  
Sheila Henderson, Paralegal

Michelle L. McLaughlin, RPR,  
Official Reporter,  
U.S.D.C. W.D.N.Y.  
(716)332-3560

## 1 I N D E X

## 2 WITNESS PAGE

## 3 RONALD SNYDER

4 Direct Examination by Mr. Piaggione 2692

5 Cross-Examination by Mr. Personius 2699

6 Cross-Examination by Mr. Linsin 2717

7 Redirect Examination by Mr. Piaggione 2722

## 8 ROBERT O'CONNOR

9 Direct Examination by Mr. Mango 2724

10 Cross-Examination by Mr. Linsin 2846

11 Cross-Examination by Mr. Personius 2825

## 12 DANIEL J. HEUKRATH

13 Direct Examination by Mr. Mango 2874

14 Cross-Examination by Mr. Personius 2894

15 Cross-Examination by Mr. Linsin 2911

16 Redirect Examination by Mr. Mango 2913

## 17 GOVERNMENT EXHIBITS EVD.

18 115.07 2730

19 115.09 2734

20 115.25 2737

21 115.29 2738

22 116.01.00 2740

23 116.01.01 2742

24 116.01.02 2743

25 116.01.03 2745

116.01.04 2748

116.01.07 2751

116.01.08 2755

116.01.09 2756

115.02.01 2765

116.02.02 through 116.02.39 2768

116.03 2769

116.06 2772

117 2777

117.01.01 through 117.01.08 2780

117.05 2782

117.06.02 2786

117.09 2787

117.10 2789

117.11 2790

118 2797

118.01 2799

2663

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

GOVERNMENT EXHIBITS

EVD.

120	2804
400 through 569	2811
21.01	2814

1 (Jury not present in the courtroom.)

2 THE COURT: Okay. Miss Labuzetta, do you  
3 want to call the case, please?

4 THE CLERK: Criminal case 10-219S, United  
5 States of America versus Tonawanda Coke and Mark  
6 Kamholz.

7 THE COURT: Okay. The attorneys and  
8 parties are assembled. The jury is here. We  
9 haven't summoned them in yet, but they will be  
10 whenever we're ready.

11 There are some preliminary matters I  
12 understand?

13 MR. LINSIN: There are, your Honor. And  
14 it's hard to determine in which order to address  
15 them. But let me begin with this, if I may.

16 I received a call last evening from Thomas  
17 Kelly, who is counsel representing Patrick Cahill,  
18 one of the witnesses who testified in the case.  
19 Mr. Kelly informed me that somehow a reporter had  
20 obtained his client's cell phone number, had called  
21 Mr. Cahill to ask him about whether or not it was  
22 true that he had been demoted at the plant  
23 following his testimony. My understanding is that  
24 Mr. Cahill declined to comment to the reporter.  
25 But my understanding is also that -- though I have

1 not seen it this morning -- that a story is run,  
2 has been run, or will be run today along that line,  
3 that somehow my client, in retaliation for  
4 Mr. Cahill's testimony, had demoted him after he  
5 testified. And I can't, of course, control the  
6 accuracy of media accounts and that's not my  
7 objective.

8 But I do want to provide some factual  
9 information just to make sure that this issue does  
10 not somehow creep into this trial or prevent it  
11 being elicited from any witness. And that  
12 information is as follows: That -- as the Court  
13 knows, Mr. Cahill used to work as the foreperson of  
14 the by-products department. Prior to the weekend  
15 March 2nd and 3rd Mr. Cahill had been working four  
16 to six hours a day in the by-products department  
17 because of problems that department was  
18 encountering.

19 Over that weekend, the weekend of March 2nd and  
20 3rd, the plant experienced two exhauster failures,  
21 which created significant risks to the plant and to  
22 the safety of the workers. And part of this was  
23 directly attributable to operator error. Three of  
24 the four by-products operators in by-products now  
25 are new.

1           Following those failures Mr. Cahill was asked  
2           to temporarily supervise directly the by-products  
3           department again to help get it back in shape.  
4           There was no reduction in pay. Mr. Cahill is  
5           continuing to sign forms and act as plant  
6           superintendent. But I am just concerned about this  
7           being -- this kind of misinformation leaking into  
8           the trial, and I wanted to do what I could to  
9           inform the Court of the actual context so that this  
10          could be hopefully prevented from infecting this  
11          trial.

12                   THE COURT: All right. Do you know if the  
13          reporter who allegedly made the call was from the  
14          Buffalo News?

15                   MR. LINSIN: I do not know the reporter's  
16          identity. I don't know how, as I said, the  
17          reporter -- and I didn't inquire, your Honor. It  
18          is my habit, honestly, not to read press accounts  
19          during a trial. It is just not productive for me.  
20          So I can't confirm whether the story's run. I'm  
21          telling you the information as I learned it from  
22          Mr. Kelly last evening, and I've not done any  
23          further inquiry.

24                   THE COURT: All right. I take it you  
25          haven't been contacted or any member of your

1 attorney team?

2 MR. LINSIN: No, we have not been  
3 contacted as far as I know. The company itself has  
4 not been contacted to verify or check the accuracy  
5 of this. But obviously the concerns of something  
6 like this -- this kind of sensationalized issue is  
7 significant, and I just wanted to bring it to the  
8 Court's attention.

9 THE COURT: Okay. What I will do is I  
10 will monitor what's on line during the course of  
11 the day, and if anything shows up, I'll get a  
12 printout and let everybody know and we'll figure  
13 out if there's anything we have to do. Certainly  
14 an admonition before the jury recesses for the  
15 weekend would probably be in order. We don't have  
16 to reference the specifics, but certainly tell them  
17 that, you know, every effort should be made in the  
18 event that, you know, they -- you know, get the  
19 paper or whatever that there might be some articles  
20 in there that they should stay away from. And, you  
21 know, we'll massage the language to make it  
22 comfortable and not highlight the fact that it  
23 might be something along that line.

24 MR. LINSIN: Right. It may be helpful,  
25 your Honor, without being pointed about it, to

1        simply -- in addition to the cautions the Court has  
2        already provided, to simply add, which is true, of  
3        course, sometimes news accounts can just get things  
4        wrong, and, you know, that would be unfortunate.  
5        And so just to -- to make that additional caution  
6        might be helpful without referencing Mr. Cahill  
7        himself.

8                THE COURT:    Okay.    Yeah.

9                MR. MANGO:    Your Honor, I don't know if  
10       the Court needs to go that far.    The government did  
11       learn about this yesterday as well from different  
12       sources.    And the information the government  
13       received is that Mr. Cahill is no longer plant  
14       manager.    Someone else is filling in in that  
15       capacity.    So at least from what I understand, the  
16       information that Mr. Cahill is still signing  
17       documents and acting as if he was plant manager,  
18       that is not the case.    There is a new person in  
19       that position, so -- but I don't think it's  
20       necessary to tell the jury sometimes that the press  
21       gets it wrong.    Because there's really -- I mean,  
22       that's one view of the the facts in this case, and  
23       the press has the right to investigate and inquire  
24       and write about what they want.

25               THE COURT:    I'll give it some thought, and



1       then I'll be careful about how I admonish the jury.  
2       I think you do agree that something is appropriate  
3       if there is to be an article in the news media  
4       before the jury breaks for the weekend.

5               MR. MANGO: As you've normally been doing,  
6       your Honor, just advising them if there is an  
7       article, please don't read it.

8               THE COURT: Okay. We'll see what occurs  
9       on line today, and then we'll go from there. Okay.

10              MR. LINSIN: Thank you, your Honor.  
11       Second issue I wanted to bring to the Court's  
12       attention is that one of the witnesses I believe  
13       the government intends to call today, Mr. Ron  
14       Snyder, is one of the witnesses that we had raised  
15       concerns about with the Court earlier on for a  
16       couple of reasons.

17              First of all, in his -- in the summary provided  
18       in his -- in the government's witness list, it was  
19       indicated that he was intending or would be  
20       proffered to testify about some unnoticed 404(b)  
21       evidence, premature green pushes from the ovens. I  
22       understand from counsel for the government they do  
23       not intend to get into that with this witness, and  
24       confident that they don't, but I wanted to put that  
25       on the record.

1 But the broader concern we have about  
2 Mr. Snyder, and I wanted to bring it to the Court's  
3 attention, is that Mr. Snyder, as I understand it,  
4 resigned from the company in September of 2005.

5 THE COURT: He was a former plant manager.

6 MR. LINSIN: He was the former plant  
7 superintendent, yes. Resigned from the company in  
8 September of 2005. He, based on the materials we  
9 have been provided by the government, from 2008  
10 forward, he has been speaking to investigators  
11 about one issue or another concerning Tonawanda  
12 Coke. Much of the information contained in his  
13 3500 material is clearly based on hearsay and  
14 nothing but hearsay information.

15 When I compare the time frame for the relevant  
16 counts in this indictment, Counts 1, 6, 11, 17, and  
17 20, given his resignation in September of 2005,  
18 Mr. Snyder would, it appears, have actual direct  
19 knowledge about all of one month during the  
20 relevant time periods in Counts 1, 6, 11 and 20 --  
21 I'm sorry, now 19.

22 THE COURT: You mentioned 17 before too.

23 MR. LINSIN: 17 is the one count that,  
24 your Honor, may recall that goes back to '98, so  
25 obviously my comments are not directed to that

1 count. But as to the other counts, 1, 6, 11 and  
2 now 19, Mr. Snyder was at the plant for all of one  
3 month during the charged period.

4 And so I raise this now in an effort to avoid  
5 repeated objections or discussions during the  
6 course of his testimony, just to advise the Court  
7 that we've seen an awful lot of hearsay information  
8 in here. He has a narrow first-hand knowledge  
9 basis of the plant for the charged period of time,  
10 and I just wanted to advise the Court before he  
11 comes on the stand that this is a significant  
12 concern for us.

13 THE COURT: Okay. All right. Snyder is  
14 going to be one of your witnesses?

15 MR. PIAGGIONE: Yes, your Honor.

16 THE COURT: And your wrap-up witness, is  
17 that Conway?

18 MR. PIAGGIONE: Yes, your Honor.

19 THE COURT: You have two left?

20 MR. MANGO: No, your Honor. We have Mr.  
21 Heukrath as well who is going to testify today, and  
22 Mr. O'Connor, who is a DEC law enforcement officer  
23 who was involved in seizing some documents that  
24 we're going to discuss as well.

25 THE COURT: Okay. Well --

1 MR. MANGO: So possibly four witnesses  
2 today, and I think we can finish today possibly.  
3 Stay true to word.

4 THE COURT: Mr. Personius?

5 MR. PERSONIUS: Your Honor, we, with  
6 respect to Mr. Conway, literally overnight so that  
7 this morning when we got up and got into the  
8 office -- when I got in around 7:00, received  
9 summary charts for Mr. Conway that we have not seen  
10 before. There may be issues with those that we'll  
11 need to address with you. I need to talk to  
12 Mr. Kamholz, Mr. Linsin, and everybody on his team  
13 about this. I just want you to know before we get  
14 to that point, if he's going to be the government's  
15 last witness, we're definitely going to need an  
16 opportunity -- we meaning the defense team -- to  
17 consult on this. There may or may not be an issue  
18 there.

19 THE COURT: There may or may not what be?

20 MR. PERSONIUS: An issue. Just so you're  
21 aware of it, Judge.

22 THE COURT: Okay.

23 MR. PERSONIUS: Judge, if I may, the other  
24 point is we've been working hard with Mr. Mango. I  
25 don't mean to leave to Mr. Piaggione out, but we've

1       been working with Mr. Mango on a stipulation that I  
2       think ties to the testimony of Mr. O'Connor  
3       relating to documents seized from Tonawanda Coke in  
4       December of 2009. There are a handful -- I have  
5       three specific issues that I need to discuss with  
6       Mr. Mango about that. I think they're all -- the  
7       issues I have I think are resolvable. I don't know  
8       whether Mr. Linsin and Miss Grasso have an issue  
9       with the stipulation. But I want you to know that  
10      too. I think the ones we have we can work out.

11               MR. LINSIN: My concern about the  
12      stipulation -- and we have tried to discuss this  
13      with government counsel, your Honor, and we don't  
14      seem to be communicating on the same wave length on  
15      this issue. The stipulation itself covers dozens  
16      of different documents. For most of the documents  
17      we do not have a genuine issue regarding the  
18      foundational question of whether these are business  
19      records. But it gets into -- there are significant  
20      questions about the relevance of many of these  
21      documents. And what I am hoping to avoid is the  
22      situation where we have a witness on the stand and  
23      we are going back and forth and back and forth  
24      about the relevancy of dozens of documents, one  
25      after the other. And that -- our discussions have

1 not been productive on that basis. And we have  
2 tried to winnow this down to focus on documents  
3 that -- where there isn't an issue with relevancy,  
4 but government counsel just doesn't seem prepared  
5 to approach it that way. So, it is a frustrating  
6 challenge given that the witness is now about to  
7 take the stand, but we have concerns about the  
8 manner in which the government seems to intend to  
9 proceed.

10 THE COURT: Well, I mean --

11 MR. MANGO: Your Honor, I'm -- we've been  
12 attempting for a couple days now to try to reach a  
13 stipulation on this. And I've been open to various  
14 alternatives in drafting the stipulation. It's  
15 gone through a couple iterations already.

16 There is some question as to relevance that I  
17 understand. The stipulation reserves the right to  
18 object on relevance grounds. If the Court wants to  
19 do -- wants to hear relevance issues ahead of time,  
20 I'm willing to do that. I haven't said I'm opposed  
21 to that, that I just need to throw the witness on  
22 the stand. I'm willing to do what the Court wants  
23 to do. There's certain records that were seized  
24 during the search warrant that the government  
25 believes are clearly relevant to the issues in this

1 case.

2 THE COURT: What counts?

3 MR. MANGO: Counts 1 -- some of the  
4 records relate to all of the counts. Some of the  
5 records relate to Counts 1 through 5, which are  
6 specifically these bleeder charts, which we've been  
7 talking about.

8 THE COURT: Okay.

9 MR. MANGO: And then there's another stack  
10 of bleeder charts there. There is a folder --  
11 there's a folder seized from Defendant Kamholz's  
12 office which says on the tab "EPA 114, 9/8/09, "  
13 which, if you remember, EPA had sent a request for  
14 information letter, a 114 request, and Mr. Kamholz  
15 had responded. We went through those responses. I  
16 don't know if you want me to do this now, your  
17 Honor, or at least go through it quicker. There is  
18 a folder --

19 THE COURT: Give me a bird's-eye on it,  
20 please.

21 MR. MANGO: There is a folder with 114  
22 information, handwritten notes of Mr. Kamholz and  
23 items in there. There's a folder seized from  
24 Mr. Kamholz's office that has notes and documents  
25 regarding the April EPA inspection, specifically

1 his notes, which I think are relevant, on the  
2 21st of April. Your Honor, there is a folder that  
3 was seized from Mr. Kamholz's office which says at  
4 the top, "Clean Air Coalition Citizens Enviro  
5 Coalition," which include articles dating back  
6 to 2005 that talk about benzene in the air.

7 THE COURT: So you're going to be going  
8 into the contents, assuming that the seized folders  
9 and documents are relevant?

10 MR. MANGO: Yes, your Honor.

11 THE COURT: All right. And through only  
12 one witness, is that what we're talking about?

13 MR. MANGO: Yes, your Honor. In terms of  
14 trying to consolidate and eliminate additional  
15 witnesses, I believe there's been at least a  
16 partial agreement that we can do this through  
17 Mr. O'Connor. That we don't need to call the  
18 witnesses who actually seized these records, and  
19 fly them in from around the country, because that  
20 would be a waste of resources.

21 Your Honor, there's another document --

22 THE COURT: O'Connor is a DEC employee,  
23 right?

24 MR. MANGO: Who was present during the  
25 search warrant, yes, and is in Buffalo. The final



1 document which I do believe is the main point of  
2 issue with the defense is during the search warrant  
3 there was various business plans seized for the  
4 Tonawanda Coke Corporation. This business plan  
5 that we intend to put into evidence, it's  
6 identified as Government Exhibit 120. It's for the  
7 fiscal year ending June 30th, 2009. In that  
8 business plan there's specific discussion about --  
9 in the market analysis under weaknesses,  
10 "significant environmental pressures include  
11 ongoing compliance with local, state, and federal  
12 emissions regulations". In the section regarding  
13 risks, there is a section about environmental risks  
14 and number three says "Economic. Compliance with  
15 environmental mandates often involves substantial  
16 capital expenditure."

17 THE COURT: Which is part of what you  
18 referenced in your opening statement, the  
19 economics.

20 MR. MANGO: Yes, and was referenced in  
21 defense's opening when they said money isn't an  
22 issue here. That's the issues with the records  
23 from the search warrant.

24 THE COURT: All right. That's essentially  
25 it, Mr. Linsin?

1 MR. LINSIN: It's not about bleeder  
2 charts, your Honor, that's for sure. The business  
3 plan that Mr. Mango references, the problem with a  
4 document like that, your Honor, is that having a  
5 document taken out of context from a company  
6 without any foundation as to the purposes for which  
7 it was developed, the audience for which it was  
8 intended, the comprehensiveness with which it  
9 represents the company's position about anything,  
10 and then for the government -- without any  
11 foundation at all, for the government to then  
12 characterize this document as representing the  
13 company's overall attitude about any one issue we  
14 believe is -- is a distortion, is unfair. It is  
15 leveraging a document that they happen to like and  
16 suggesting, ah-ha, this characterizes the company's  
17 entire approach to environmental regulation. And  
18 that, your Honor, I believe is putting far too much  
19 weight on the fact that a particular document  
20 happened to be seized from the company. Selected  
21 documents were taken. And it is the contextual  
22 issue that is lacking here.

23 THE COURT: Well -- but that -- I mean,  
24 that's typical, right? I mean, that is something  
25 that you can question the witness about. If you

1 choose to put on a defense, you can have  
2 information made available on the defense with  
3 respect to the -- the plan and provide the context  
4 if you choose to do that for that plan document,  
5 the notebook document. I mean, I don't know if  
6 it's that unusual. The document, there's no issue,  
7 it was seized, right? It states what Mr. Mango  
8 says it states?

9 MR. LINSIN: That is correct, your Honor.

10 THE COURT: Okay. Well, all right. Well,  
11 it's helpful for me to get the overlay on that.

12 MR. MANGO: Your Honor, one issue to  
13 follow up, just so the Court is aware, one of the  
14 defense witnesses, if they choose to put on a case,  
15 I believe is the author of these business plans,  
16 Mr. Bloom, who would have authored this. So there  
17 is very much a chance for the defense to put this  
18 into context if that's what they want to do.

19 MR. LINSIN: Your Honor, if I may, one of  
20 the other folders that Mr. Mango referenced though  
21 concerns -- contains news articles and a number of  
22 other records that we believe are -- are entirely  
23 irrelevant. And I didn't hear any connection in  
24 the comments Mr. Mango made about any relevance of  
25 some collection of news articles.

1           There has been great care taken to ensure that  
2       news accounts and Clean Air Coalition activities be  
3       kept out of this case. And now the government is  
4       seeking to, through a folder it happened to have  
5       found, to get all of this in front of the jury.  
6       And that, I believe, is clearly improper.

7           MR. MANGO: Your Honor, the items that we  
8       were going to put into evidence, if allowed and  
9       permitted by the Court, there are certain news  
10      articles in here that do not discuss specific  
11      results. And according with the Court's earlier  
12      rulings, we were going to stay consistent with  
13      that. There's one article in particular that just  
14      says that there's now an air quality concern in  
15      Tonawanda in 2005. It was a Tonawanda News  
16      article.

17           It's very important. This was in Mr. Kamholz's  
18      office in a folder. And this goes back to  
19      Mr. Carlacci's testimony which was allowed to come  
20      in, which is why he even went there in '08, because  
21      there's this benzene issue. It goes to knowledge,  
22      motive, and intent. And we'll take very, very  
23      great care in making sure that any of the news  
24      articles in here that we do offer for evidence do  
25      not contain any analytical results.

1 THE COURT: Is that folder marked Mark  
2 Kamholz?

3 MR. MANGO: It came from his office, and  
4 the tab says "Clean Air Coalition, Citizens Enviro  
5 Coalition," and that was one of the folders in his  
6 office.

7 THE COURT: Okay. I mean, your argument  
8 is that it's relevant on the issue of knowledge at  
9 the very least?

10 MR. MANGO: Yes, your Honor.

11 THE COURT: Okay.

12 MR. PERSONIUS: Judge, if I could be heard  
13 on that too, because it affects Mr. Kamholz.

14 THE COURT: Yes.

15 MR. PERSONIUS: As Mr. Mango has  
16 indicated, we've had not just Mr. Carlacci, we've  
17 had several witnesses testify about Mr. Kamholz's  
18 being informed about the concerns in that area with  
19 benzene emissions, about the visits, or at least  
20 two visits the DEC had to speak with Mr. Kamholz  
21 about that. August of 2007 and May of 2008 come to  
22 mind.

23 So, this folder on that point is cumulative.  
24 You've already got the evidence in. On the other  
25 hand, it runs the risk of prejudice, because you're

1 dealing with news articles, you're dealing with  
2 this Clean Air Act Coalition, which Mr. Linsin  
3 indicates we've been trying to keep out of the  
4 case.

5 I'd like to suggest, Judge, you might get to a  
6 balancing issue here, and because you've already  
7 got that evidence in, and I don't think that's been  
8 contested, that he was informed of that, I think  
9 that should clearly be -- be kept out.

10 THE COURT: Why isn't it cumulative  
11 evidence?

12 MR. MANGO: Yes, your Honor. Thank you  
13 for asking that question. That's why I was going  
14 to stand up. This is a very different form of this  
15 evidence. Now the evidence that we have is that  
16 DEC was concerned and made an approach to Defendant  
17 Kamholz to tell him, "Hey, there's benzene in the  
18 air. We're going to be looking at this, you know,  
19 what's going on?"

20 It's a very different story when the evidence  
21 is coming from his own hand, that he's printed news  
22 articles out, or saved these news articles in a  
23 folder. It shows a different level of awareness  
24 than just being told by the DEC that there's  
25 benzene in the air. It's his own -- you know, and

1       this is well before DEC even showed up and told him  
2       that we were doing this. This article is  
3       from 2005. There's no testimony that -- that he  
4       was told by the DEC starting in 2005 that there was  
5       an air quality issue. It was only in -- I believe  
6       it was '08 when the funds were approved for this  
7       air monitoring study.

8               So my -- my argument, your Honor, on cumulative  
9       is, one, it is not cumulative because it actually  
10      moves the time period earlier in terms of  
11      knowledge, and it is a very different form of  
12      notice and knowledge.

13               THE COURT: Okay. Okay. Now that's  
14      helpful. I don't think we need more discussion.  
15      We'll see how it unfolds as we go through the  
16      testimony. Who's going to be your first witness?

17               MR. PIAGGIONE: It's going to be  
18      Mr. Snyder, your Honor. Ron Snyder.

19               THE COURT: And he's the former plant  
20      manager that we talked about?

21               MR. PIAGGIONE: That's correct.

22               THE COURT: So we have a -- I don't know  
23      if this was a good start to the day or not, but  
24      there's certainly a number of issues that surfaced  
25      today. All right. We will continue to monitor the

1 online accounts, news accounts, to see if there is  
2 anything that is published with respect to the  
3 Cahill matter that we talked about earlier. So,  
4 you know, I'll keep you updated on that.

5 Okay. Well, I think we're probably at the  
6 point where we should try to begin, and then we'll  
7 see where we wind up it. It seems like an  
8 ambitious day, frankly, to try to get four  
9 witnesses in. But, you know, we'll do what we can.

10 MR. LINSIN: And, your Honor, I don't mean  
11 to prolong this at all, but I do want to echo the  
12 concerns that Mr. Personius mentioned about the  
13 summary charts. This is not a matter of ten  
14 minutes to review something. This is -- these are  
15 significant issues, and I -- we'll do what we can,  
16 but we just literally received them overnight.

17 THE COURT: All right. I'm not going to  
18 push for you to give time that you're not  
19 comfortable with in terms of getting to the  
20 testimony. I'd rather have you secure in your  
21 decision on whether or not there's an objection to  
22 the summary charts or not. I mean, that's --  
23 that's always a problem. It's always an issue with  
24 summary charts. And in order to eliminate issues  
25 that are almost certain to arise, if you don't have



1 sufficient time to look at them -- I mean, I'll  
2 give you whatever time you need. And we want to  
3 make sure there's a fact basis for everything  
4 that's contained in whatever the summary  
5 accounts -- and I don't know what they are, but --  
6 so, you know, we've noted it. You'll have whatever  
7 time you need. You know, we don't have to --  
8 there's not a time urgency, I don't think, with  
9 getting everybody on today. If everybody's  
10 comfortable, we'll try it. But otherwise, you  
11 know, if we extend it to Monday, so be it.

12 Okay. That's pretty much it then. Nothing  
13 else?

14 MR. PIAGGIONE: No, your Honor.

15 MR. LINSIN: Thank you very much, your  
16 Honor.

17 MR. PERSONIUS: Judge, the only I thing  
18 I'd add is, whether it will be the end of the day  
19 today, or whether it will be Monday will depend on  
20 where we're at. But the defense will have a  
21 written submission for you on the Rule 29.

22 THE COURT: Yeah. We're going to have to  
23 discuss that too at the appropriate time. I want  
24 to give you some time -- I think that's what we had  
25 talked about -- to argue your motion. You know, I

1 think you had indicated you were planning something  
2 by way of submission in terms of guidance with  
3 respect to your positions on the Rule 29,  
4 Mr. Personius. And maybe not from Mr. Linsin, but  
5 we'll see.

6 MR. LINSIN: It will be a joint  
7 submission, your Honor.

8 THE COURT: Oh, okay.

9 MR. PERSONIUS: In interest of full  
10 disclosure, it's thanks to Mr. Glasner.

11 THE COURT: I noticed a few extra bags  
12 under his eyes. I figured he was probably working  
13 on that.

14 THE COURT: Okay. All right. We can talk  
15 about a timetable on getting the submission once  
16 we -- you're comfortable with giving it to me. And  
17 I don't know if the government's going to have a  
18 response in writing, but we'll see.

19 MR. MANGO: We'll see, your Honor. We'll  
20 try.

21 THE COURT: It's always a safe statement,  
22 right, Mr. Mango, we'll see. Okay.

23 Mr. Moeller, what do you think?

24 LAW CLERK: I have no comment.

25 THE COURT: All right. Okay. Chris,

1 let's get the jury in I think.

2 Michelle, you're ready?

3 (Jury seated.)

4 THE COURT: Good morning. Have a seat.  
5 What's with all this green?

6 THE JURY: To match your tie.

7 THE COURT: Thank you. We just had a  
8 little discussion about that earlier. Good to see  
9 everybody. You can tell we're all ready and about  
10 to start for the day. But I thought I would be  
11 remiss -- a couple of -- I thought we'd start a  
12 little earlier, but we've been working hard at  
13 this, so, I thought it would be appropriate to just  
14 go over a couple of things, what's today?

15 A JUROR: Friday.

16 A JUROR: Ides of March 15th.

17 THE COURT: How about the Ides of March?

18 A JUROR: He said that.

19 THE COURT: All right. And, of course, we  
20 know for the most part -- and, you know, there is a  
21 a few things associated with the Ides that we  
22 probably should talk about before we start the  
23 trial.

24 Because you know that back in the early Roman  
25 days, right, the month of March was the first month

1 of the Roman New Year, and the first full moon of  
2 the Roman New Year was Usually what date?  
3 March 15th. All right. This month of March is an  
4 amazing month that we're experiencing together,  
5 right? Okay.

6 So you're going to look up in the sky tonight,  
7 right? You've got a lot of things on your mind,  
8 but you're going to check out and see if we have a  
9 full moon. Who was assassinated?

10 A JUROR: Julius Cesar.

11 THE COURT: Yeah, there you go. Not bad.  
12 But here's something else. This month of March is  
13 amazing. Now just think what you're going to be  
14 experiencing. Once in every 823 years the month of  
15 March there are -- and I love this statistic, and  
16 you can check your calendars -- five Fridays and  
17 five Saturdays and five Sundays this year. All  
18 right. So who thinks they're going to be around in  
19 823 years to see the next one? All right. So,  
20 historic, right? We've got a lot that we're  
21 experiencing together.

22 I have one sad thing to report. And usually  
23 this day is a special day to Mary, because it's --  
24 it's her favorite holiday of the year, all right,  
25 March 15th because every year the buzzards return

1 to Hinkley, Ohio, all right, en mass. Thousands  
2 buzzards go back to Hinkley, Ohio, on March 15th.  
3 It's sort of like Ground Hog Day, only it relates  
4 to buzzards. So she loves to be off on that day.  
5 Mary sometimes migrates with the buzzards. Not  
6 always, but when we have trials she has to stay  
7 here.

8 But buzzards are her favorite bird, because,  
9 you know, she knows that their digestive system  
10 kills bacteria, and she thinks that's important.  
11 And those buzzards don't carry any diseases  
12 whatsoever. So, there's a lot to be said, I think,  
13 about those birds. And Mary can relate to  
14 buzzards. It's very, very important to her.

15 So, you know, in honor of Mary, we're going to  
16 dedicate the day to her holiday. We're going to  
17 try to get a lot accomplished today. We want to  
18 thank you for your attention. That's our segue  
19 into, you know, historically March, in our  
20 experience together, very important. But this  
21 case, as you know, is important to both sides.

22 We've got a lot to do today. You've been  
23 terrific, absolutely terrific. And we've got a  
24 number of witnesses we have to get to. Please keep  
25 your minds open. And you know what your burden is,

1       it's to decide unanimously -- and you're going to  
2       be the only ones that know as much about this case  
3       anywhere, anytime, anyplace with respect to putting  
4       it in the perspective of proof beyond a reasonable  
5       doubt. Did the government meet its burden or not?  
6       And you're working with that sacred presumption of  
7       innocence that attaches to both defendants in this  
8       case.

9               So, we've got a lot to do. You've been great.  
10       We have been moving through this case. Please  
11       don't discuss this case. Please stay away from any  
12       media accounts that in any way relate to the  
13       subject matter or this case in particular, because  
14       that would be unfair. Everything you're going to  
15       need to apply your common sense, your experience,  
16       your intelligence to get to the point where you  
17       render that unanimous verdict. And what does that  
18       require? That requires that you resolve all of the  
19       fact issues that are necessary with respect to the  
20       19 counts in this particular indictment. Okay.

21               So are you ready? Okay. And this still is the  
22       government's case.

23               Mr. Piaggione, I know you're ready, so bring on  
24       your first witness for us, please.

25               MR. PIAGGIONE: Thank you, your Honor.

1 The government would call Ron Snyder, please.

2 THE COURT: All right. Mr. Snyder, if you  
3 would approach the witness stand, please, and I'll  
4 tell you when to stop, and it's right there. If  
5 you would do a little rotation, face the jury,  
6 please.

7 R O N A L D S N Y D E R, having been duly sworn as  
8 a witness, testified as follows:

9 THE COURT: All right. Good morning, sir.

10 THE WITNESS: Good morning.

11 THE COURT: How are you doing?

12 THE WITNESS: Good.

13 THE COURT: All right. Got a couple of  
14 preliminary instructions for you. Just in that  
15 exchange it sounds like you're going to carry okay  
16 on the microphone. It's friendly. You have to  
17 just speak at it in a conversational tone, and then  
18 it generally works. I do ask you to face the jury,  
19 comfortably, because you are here to testify for  
20 their benefit.

21 THE WITNESS: Right.

22 THE COURT: Key to this is that you not  
23 answer any questions you don't understand. If you  
24 don't understand the question, let the attorneys or  
25 me know, if you don't understand. When you do get

1 a question that you understand and you answer it,  
2 please be as concise as you possibly can. If you  
3 can possibly answer it yes or no, if that's what  
4 the question calls for, please do that. Don't  
5 volunteer information.

6 If there's an objection, and there are likely  
7 to be some, wait until I rule on the objection, and  
8 then I'll give you the instruction continue with  
9 your answer, wait for another question, or  
10 something along those lines for you to follow.  
11 Fair enough?

12 THE WITNESS: Very good.

13 THE COURT: Okay. Please, so that we know  
14 for sure how you're going to sound over the  
15 microphone system, please state your full name and  
16 spell your last name, please.

17 THE WITNESS: Ronald Snyder, S-N-Y-D-E-R.

18 THE COURT: Okay. Mr. Piaggione, if you  
19 spell your last name and then begin.

20 MR. PIAGGIONE: P-I-A-G-G-I-O-N-E. But  
21 for today it starts with M-C.

22 THE COURT: Go ahead, please.

23 DIRECT EXAMINATION BY MR. PIAGGIONE:

24 Q. Mr. Snyder, was there a time that you were  
25 employed by the Tonawanda Coke Corporation?



1 A. Yes.

2 Q. And when was that?

3 A. I started 1978 and worked till 1980. I left in  
4 1980, came back in 1983, and worked till the fall  
5 of 2005.

6 Q. Okay. And can you tell the jury what were your  
7 duties after you returned from that one absence?

8 A. I came back in 1983 as a door machine operator  
9 on the ovens. I did that for two years. And in  
10 1985 I was made a general foreman on the battery.  
11 I did that job for five years. 1990 I was made a  
12 coal handling supervisor, held that position for 13  
13 years, and then I was made plant superintendent  
14 in 2003, and held that position until the fall  
15 of 2005.

16 Q. Okay. Now, in the course of your duties as a  
17 coal handling --

18 A. Coal handling supervisor.

19 Q. -- supervisor, right, did you work in the coal  
20 fields?

21 A. Yes.

22 Q. And when you were working at Tonawanda Coke --  
23 were you working at Tonawanda Coke when the pad was  
24 installed in the coal fields?

25 A. Yes.

1 Q. Do you know approximately when that pad was  
2 installed?

3 A. 1995.

4 MR. PIAGGIONE: Okay. Your Honor, I'd  
5 like to use Government's Exhibit 3.02, which is in  
6 evidence.

7 THE COURT: Okay.

8 THE WITNESS: That is it.

9 BY MR. PIAGGIONE:

10 Q. Okay.

11 A. That is the concrete pad.

12 Q. Okay. Wait for a question, please.

13 A. Yes, sir. I'm sorry.

14 Q. Can you recognize that photograph?

15 A. Yes.

16 Q. Okay. And what is that?

17 A. That is the concrete pad and the ramp leading  
18 to the pug mill.

19 Q. Okay. And the pug mill -- can you just touch  
20 the screen where the pug mill is located?

21 A. Right here.

22 Q. Okay. And do you know when that machine was  
23 installed?

24 A. It was approximately two years after the  
25 concrete pad was finished.

1 Q. Okay. And in the course of your duties as a  
2 coal field operator, coal --

3 A. Coal handling supervisor.

4 Q. Correct. In the course of your duties there,  
5 did you ever operate that machine?

6 A. Yes, I did.

7 Q. Okay. Approximately what time frame was it  
8 that you operated that machine?

9 A. After it was installed, over the course of the  
10 next two or three years at various times we ran  
11 that.

12 Q. Okay. And can you describe what that machine  
13 did exactly?

14 A. Well, in theory we were going to mix up  
15 product, coal and tar slurry, tar sludge, and it  
16 was going to be placed in the hopper. It would go  
17 down the hopper on to a conveyor belt, and at the  
18 end of the conveyor belt was a series of cutting  
19 blades or mixing blades that would blend this  
20 together and drop it down on a conveyor belt.

21 Q. Okay. So this machine would basically prepare  
22 the coal tar sludge for introduction into the --  
23 into the ovens?

24 A. Yes.

25 Q. Okay. And did that process involve the coal

1 tar sludge hitting the ground at all?

2 A. Yes. At times if the machine malfunctioned,  
3 there were problems with it, there was spillage.

4 Q. But when it was operating properly, did  
5 materials hit the ground?

6 A. Yes.

7 Q. Okay. How did it hit the ground then?

8 A. There was leakage through the conveyor belts,  
9 and if the conveyor belt that it was feeding  
10 stopped and the pug mill kept running, then you got  
11 a big pile, and there was always spillage.

12 Q. Okay. And do you know how long that machine  
13 attempted to continue to operate?

14 A. I ran it with other laborers and other  
15 personnel for -- over the various times for two or  
16 three years, and then finally we just stopped using  
17 it. It wasn't working.

18 Q. Okay. Now, in the course of your duties  
19 in 2005 as a plant superintendent, was it?

20 A. Yes.

21 Q. Were you in the coal fields at that time?

22 A. Yes.

23 Q. Okay. And were you ever there in the coal  
24 fields when it rained?

25 A. Yes.

1 Q. Okay. What did you observe when it rained in  
2 the coal fields, if anything?

3 A. Well, the way the coal field is set up, there's  
4 a conveyor belt that runs down the center of the  
5 entire coal field. That's the highest part of the  
6 elevation of the field. And then on each side of  
7 the conveyor belt, the coal field slants and drops  
8 off and slopes off. And when it rained or we had  
9 heavy snow melt, the water would run off to the  
10 sides of the coal field and go into ditches.

11 Q. Okay. And what would happen -- you said there  
12 were ditches. Were those ditches there by accident  
13 or by design?

14 A. They were -- they were -- we put them in. I  
15 mean, we had to get rid of the water in the coal  
16 field. The field would become unmanageable because  
17 of the amount of water. The ground would turn into  
18 a very big, heavy slurry. So to make the field  
19 manageable for vehicles and such to drive through,  
20 we had to get rid of the water.

21 Q. Where would the water go?

22 A. There was a ditch on each side of the coal  
23 field. The water in it would run typically from  
24 east to west towards the west end of the plant.  
25 The two ditches eventually came together, went

1        underneath a roadway. From there I have no idea  
2        where it went.

3        Q. Okay. Now, did these ditches ever become  
4        blocked in any way?

5        A. Yes. There was so much slurry from the coal  
6        fines that the water would stop running. And also  
7        there was pipes underneath. We had 12- or 15-inch  
8        pipes that we ran underneath the access roads to  
9        the coal field to allow the water to drain and  
10       continue towards the west end of the plant.

11       Q. Okay. Now, can you describe the water that you  
12       saw in the ditches?

13       A. Well, it was -- it was always black. The water  
14       was always black from -- from the rain or the snow  
15       melt from running through the coal, and there was  
16       also obvious petroleum deposits, rainbow colored,  
17       bluish color tint to it.

18       Q. Okay. Now, can you please describe the  
19       circumstances under which you left employment with  
20       Tonawanda Coke?

21       A. In August or September I was called to the  
22       front office and told I was being demoted and sent  
23       back to the coal handling department, and that  
24       would happen the very next day.

25       Q. Okay. And as a result of that you resigned?

1 A. Yes. Not at that moment. I made up a  
2 two-week -- letter of resignation, and gave  
3 two-week notice, and after that I was gone.

4 Q. And are you bitter about that -- circumstances  
5 under which you left?

6 A. I am. I mean, at the time I was 48 years old  
7 and I had 24 years invested, and to not be given a  
8 specific reason for the demotion, to me, was very  
9 troubling.

10 Q. But does that affect your testimony today?

11 A. Not at all.

12 MR. PIAGGIONE: I have no further  
13 questions, your Honor.

14 THE COURT: Okay, Mr. Piaggione, thank  
15 you.

16 MR. PERSONIUS: Your Honor, if it's okay  
17 with you, may I go first?

18 THE COURT: Certainly.

19 MR. PERSONIUS: Thank you, Judge.

20 CROSS-EXAMINATION BY MR. PERSONIUS:

21 Q. Good morning, Mr. Snyder.

22 A. Good morning.

23 Q. My name is Rod Personius, and I represent Mark  
24 Kamholz. You know who Mark is, right?

25 A. Yes.

1 Q. Okay. During -- if I understand correctly,  
2 after you left Tonawanda Coke -- and, again, what  
3 year was that?

4 A. 2005.

5 Q. All right. There came a time several years  
6 later where you engaged in conversations with  
7 different DEC personnel?

8 A. Yes.

9 Q. And that led to conversations also with  
10 personnel from the EPA?

11 A. Yes.

12 Q. And the U.S. Attorney's office?

13 A. Yes.

14 Q. Okay. And in preparing to testify here today,  
15 have you reviewed any -- any documents?

16 A. Yes.

17 Q. Okay. What -- what did you review, please?

18 A. I've seen pictures, and I've seen transcripts  
19 of other people's accounts of things that were  
20 going on at Tonawanda Coke.

21 Q. These transcripts that you saw, are you talking  
22 about grand jury transcripts?

23 A. No.

24 Q. Okay. What were these -- when you say  
25 "transcripts," can you be a little more specific



1       what you're referring to?

2       A.   They were summaries of reports that -- I don't  
3       know where they came from. Rocky had given me a  
4       copy along with Aaron, and they were just what  
5       other people have stated about things that have  
6       happened.

7       Q.   Okay. And so in testifying here, you had the  
8       benefit -- would these be agent reports of  
9       interview, would that be a way to describe those,  
10      that summarized an interview of an employee?

11      A.   I can't tell you exactly. I don't know.

12      Q.   All right. Do you remember the -- the  
13      employees whose interviews you reviewed?

14      A.   No, I don't.

15      Q.   You don't remember the names of any of them?

16      A.   No, I don't.

17      Q.   Do you remember how many of these summaries you  
18      reviewed?

19      A.   I believe there was two sets of documents on  
20      each page. There was probably, two, three pages  
21      for each document.

22      Q.   I see. Okay. And how many -- roughly how many  
23      of these documents then were there, these two- or  
24      three-page documents?

25      A.   Just two.

1 Q. Just two?

2 A. Yes.

3 Q. Okay. Did they summarize the statements given  
4 by a variety, then, of different witnesses?

5 A. Yeah, there was several different people  
6 mentioned in the -- in the accounts.

7 Q. All right. And that was given to you to help  
8 prepare you to testify here?

9 A. I don't know why it was given to me. I may  
10 have asked for some specific information. I don't  
11 know why.

12 Q. Okay. But before you came to testify, you  
13 reviewed these summaries?

14 A. Yes.

15 Q. All right. And in addition to that, did you  
16 review any agent reports of interviews of you?

17 A. No.

18 Q. Just these reports of the interviews of other  
19 people?

20 A. Right.

21 MR. PERSONIUS: Your Honor, I don't think  
22 we've seen that, and at some point I think we  
23 should probably have a chance to look at that.

24 THE COURT: Okay. Do you want to proceed  
25 now, or do you want to find out what there was from

1 Mr. Mango or Mr. Piaggione?

2 MR. PERSONIUS: I'll do it any way you  
3 want to. If you want me to continue for now, I  
4 can.

5 THE COURT: Yeah. I think you should, and  
6 then when you're at a point where you want to  
7 break, we'll have you, out of the presence of the  
8 jury, just kind of work it out with government  
9 attorneys.

10 MR. PIAGGIONE: Your Honor, we only showed  
11 Mr. Snyder his own statements.

12 THE COURT: All right. Why don't you talk  
13 with the government attorneys now, okay?

14 (Discussion off the record.)

15 MR. PERSONIUS: I think I can deal with  
16 it, Judge.

17 THE COURT: All right, good. Thank you.

18 MR. PERSONIUS: Thank you, Rocky.

19 BY MR. PERSONIUS:

20 Q. For identification -- what we're going to try  
21 to do is show you what we understand you looked at  
22 and have you look at it, Mr. Snyder, and let us  
23 know if this is what you reviewed.

24 A. Okay.

25 Q. This is for identification. Lauren, would you

1 please put up so that Mr. Snyder can look at  
2 Government Exhibit 3561.01.

3 Do you see on your screen, Mr. Snyder, that you  
4 have a document, in the upper right has a yellow  
5 sticker that says 3561.01?

6 A. Yes, I do.

7 Q. All right. Lauren, could you make the content  
8 a little bigger? Thank you.

9 Just take a quick look at that, Mr. Snyder.  
10 Let us know if this is one of the statements you  
11 looked at.

12 A. Yes, it is.

13 Q. Okay. And there is another page to it, just so  
14 you know. It's a two-page document. So you've  
15 reviewed this document, right?

16 A. Yes, I did.

17 Q. And do you see that this is identified as a  
18 report of an interview of you on November 9  
19 of 2009?

20 A. That's correct.

21 Q. All right. And this is one of the documents  
22 that you reviewed?

23 A. Yes.

24 Q. All right. And did you satisfy yourself when  
25 you reviewed it as to the accuracy of what was

1 reported in this document?

2 A. Yes.

3 Q. And did you satisfy yourself it was accurate?

4 A. Yes.

5 Q. Okay. Thank you. Again for identification,  
6 Lauren, could you please put up for Mr. Snyder to  
7 review exhibit -- Government Exhibit 3561.02.

8 Again, that's for identification.

9 And again, Mr. Snyder, in the upper right you  
10 see the yellow sticker, sir?

11 A. Yes.

12 Q. And it says 3561.02?

13 A. Yes.

14 Q. Lauren, could you make that bigger? Thank you.

15 Just take a quick look at that, Mr. Snyder.

16 There is a second page to that one also.

17 Would you show him the second page too, please,  
18 Lauren?

19 Is this document familiar to you, Mr. Snyder?

20 A. Yes, it is.

21 Q. Okay. Is this another document you reviewed  
22 before testifying?

23 A. Yes.

24 Q. All right. So it's identified -- this  
25 indicates it's an interview report from

1 March 22, 2010, and it was an interview of you?

2 A. Yes.

3 Q. All right. And again, did you review the  
4 document and satisfy yourself that what was  
5 reported in this document was accurate as to what  
6 you had told the investigators?

7 A. Yes.

8 Q. Would you put up, Lauren, for identification,  
9 please, Government Exhibit 3561.03?

10 And again, Mr. Snyder, in the upper right do  
11 you see the yellow sticker that says 3561.03?

12 A. Yes, I do.

13 Q. We're going make it a little bigger for you.  
14 Just take a quick look at this document, please.

15 This is several pages and, Lauren, if you can  
16 show Mr. Snyder all pages, please.

17 A. Can I read it?

18 Q. Yes, I'm sorry. You want to see the first page  
19 again?

20 A. Yeah, I'd like to read it.

21 Q. Okay. Sorry.

22 A. Okay.

23 Q. Would you like to see the rest of the exhibit?

24 A. Yes, I would.

25 Q. Second page please, Lauren.

1           Lauren will make it a little bigger for you,  
2           Mr. Snyder.

3           A.    Okay.

4           Q.    Was that the last page?

5           A.    Yes.

6           Q.    Do you remember this document?

7                   THE COURT:   This is the last page here?

8                   MR. PERSONIUS:   Yes.   Thank you, Judge.

9                   THE WITNESS:   Very good.

10          BY MR. PERSONIUS:

11          Q.    Okay.   It's a three-page document?

12          A.    Yes.

13          Q.    Okay.   And is this familiar to you?

14          A.    Yes.

15          Q.    Did you review this document also before coming  
16          here to testify?

17          A.    I don't know if I reviewed it before coming  
18          here, but I have seen it before.

19          Q.    All right.   Just so we briefly identified it,  
20          this is not a report.   This is two different  
21          emails?

22          A.    Yes.

23          Q.    And one -- if I understand it correctly, one  
24          was prepared by you?

25          A.    Yes.

1 Q. Okay. All right. And then just for  
2 identification again, Lauren, please put up  
3 Government Exhibit 3561.04.

4 Do you see the sticker in the upper right,  
5 Mr. Snyder?

6 A. Yes, I do.

7 Q. It indicates this is Exhibit 3561.04?

8 A. Yes.

9 Q. Would you make it larger, please, Lauren?

10 And again, just if you take a look at that,  
11 Mr. Snyder, and satisfy yourself as to whether  
12 you're familiar with it.

13 A. I have not seen this before.

14 Q. Okay. Just so we've, in a sense, identified  
15 what this exhibit is, it's handwritten notes,  
16 right?

17 A. Yes.

18 Q. You did not see this?

19 A. No.

20 Q. All right. So --

21 THE COURT: Is there another page?

22 MR. PERSONIUS: Yes, there is, Judge.

23 THE COURT: Show that one as well.

24 BY MR. PERSONIUS:

25 Q. Okay. That's page two you're looking at now,



1 right?

2 A. I can't read it, it's too small.

3 Q. We'll make it bigger.

4 Mr. Snyder, have you seen this before?

5 A. I have not seen this before.

6 Q. Could you go just to the third page, Lauren,  
7 please?

8 All we're asking, Mr. Snyder, is to let us know  
9 if you've seen this before. You don't need to  
10 review it if you haven't seen it. Probably best if  
11 you don't review it if you haven't seen it.

12 Have you seen this page before?

13 A. I have not seen this before.

14 Q. All right. Very good. So from what I  
15 understand then, the first two exhibits you were  
16 shown, which were 3561.01 and 3561.02, which are  
17 two typed agent reports, those you've seen before?

18 A. Yes.

19 Q. And these other two documents you have not?

20 A. No. I have not seen the other documents.

21 Q. And to try to clear up what got us to this  
22 point, the two documents you've told us you've seen  
23 before, are those the documents you reviewed before  
24 testifying?

25 A. Yes.

1 Q. Did you review anything else?

2 A. No.

3 Q. Okay. Thank you. On direct examination do you  
4 recall you gave some testimony about a machine that  
5 you called a pug mill?

6 A. Yes.

7 Q. It was shown in the photograph with the -- with  
8 the pad?

9 A. Yes.

10 Q. All right. And you described how that  
11 operated, that device?

12 A. Yes.

13 Q. And it didn't sound like it operated all that  
14 great --

15 A. It did not.

16 Q. -- was that true? And it was used off and on  
17 for about three years?

18 A. Yes.

19 Q. Would it be fair to say it was used a lot less  
20 often than more often?

21 A. Yes.

22 Q. Okay. Used infrequently?

23 A. Yes.

24 Q. Okay. Thank you. You started at Tonawanda  
25 Coke, I think you said, in 1978?

1 A. Yes, to my knowledge.

2 Q. And am I -- so that you were at Tonawanda  
3 Coke -- with that little exception that you told us  
4 about, you were there for how many years at  
5 Tonawanda Coke?

6 A. Close to 24 years.

7 Q. All right. And do you remember when you were  
8 interviewed by the agents telling them that you  
9 remembered that there's a pressure relief valve in  
10 the by-products area?

11 A. Yes.

12 Q. And do you remember telling the agents that, to  
13 your understanding or based on your observation,  
14 that had been there over 30 years?

15 A. To the best of my knowledge, it was there the  
16 whole time I was there.

17 Q. The whole time you were there.

18 A. So 30 years would be an exaggeration, yes.

19 Q. But at least when you started back in '78 it  
20 was there?

21 A. As far as I remember, it was there.

22 Q. Okay. You've testified about the concrete pad,  
23 you saw a picture of it?

24 A. Yes.

25 Q. And am I correct in understanding that what

1       that pad was principally used for was to store  
2       incoming or what I might call off-site coal tar  
3       sludge coming from Bethlehem Steel or Indianapolis  
4       Coke?

5       A. We didn't have specific knowledge where the  
6       product was coming from, but, yes, it was trucked  
7       in.

8       Q. Okay. And stored on that pad?

9       A. Yes.

10      Q. Now, I noticed -- and I don't know that you  
11      reviewed this document, but in one of the first  
12      times that you spoke with the DEC, which I think  
13      would have been in 2008, there was a reference to a  
14      gentleman named Paul Borcynski?

15      A. Yes.

16      Q. B-O-R-C-Y-N-S-K --

17      A. I.

18      Q. -- I?

19      A. That's correct.

20      Q. And who is Paul Borcynski?

21      A. He's one of the members of the coal handling  
22      staff.

23      Q. Okay. And do you remember mentioning his name  
24      to the DEC?

25      A. I do not.

1 Q. All right. And how long has Mr. Borcynski  
2 worked at Tonawanda Coke?

3 A. Since 1978.

4 Q. And always in coal handling?

5 A. Yes.

6 Q. So as a coal handler, what would have been his  
7 duties?

8 A. He ran the car dumper which takes railroad cars  
9 and turns them upside down and sends coal into the  
10 building, and he also monitors conveyor belts that  
11 process coal.

12 Q. All right. Now, you were at -- I don't know  
13 that you were -- were you at Tonawanda Coke  
14 in 2008?

15 A. No.

16 Q. You weren't there then. Okay.

17 Something else that you mentioned I noticed in  
18 one of the -- either the reports or the notes, is  
19 an organization called -- I call it the  
20 A-triple-C-I?

21 A. Yes.

22 Q. What does that stand for?

23 A. I believe it stands for American Coal, Coke,  
24 and Chemical Institute.

25 Q. All right. And do you know what the ACCCI is?

1 A. No, I don't.

2 Q. Do you remember mentioning that to the agents?

3 A. Yes.

4 Q. Okay. And you said they had a --

5 MR. PIAGGIONE: Your Honor, I'm going to  
6 object to this line of questioning. I'm not quite  
7 sure if this has anything to do with the direct  
8 testimony.

9 THE COURT: Yeah. You're going to connect  
10 this up, I take it?

11 MR. PERSONIUS: It will connect up with a  
12 later testimony. It won't be connected up with  
13 this witness, but it will be connected up with  
14 later testimony that will be presented, Judge, not  
15 with this witness.

16 THE COURT: All right.

17 MR. PERSONIUS: But it will be connected  
18 up.

19 THE COURT: Okay. I'll allow it.

20 MR. PERSONIUS: Thank you, Judge. It will  
21 be brief, Judge.

22 BY MR. PERSONIUS:

23 Q. You had mentioned to one of the government  
24 people that you talked to that ACCCI had an  
25 excellent Web site on coke.

1 Do you remember that?

2 A. Yes.

3 Q. But you don't know what the ACCCI is?

4 A. I don't know what they specifically do. I  
5 understand it's some type of organization, most  
6 likely to promote the coal and coke industry.

7 Q. A national organization?

8 A. I believe it is.

9 Q. Okay. Thank you.

10 While you were working at Tonawanda Coke, you  
11 from time to time would have occasion to see the  
12 quench towers?

13 A. Every day.

14 Q. And --

15 MR. PIAGGIONE: Again, your Honor, I'm  
16 going to object. This is going beyond the direct.

17 THE COURT: No. His employment has been  
18 opened up. Overruled.

19 BY MR. PERSONIUS:

20 Q. And you were aware that the quench towers did  
21 not have baffles?

22 A. Yes.

23 Q. All right. And do you know based on your  
24 observations while you worked at Tonawanda Coke for  
25 the period you did that from time to time DEC

1 inspectors would come to the plant?

2 A. Yes.

3 Q. All right. And would you see those inspectors  
4 at the plant?

5 A. Typically, I wouldn't see them. The majority  
6 of my time was either on top of the coke ovens or  
7 the very top of the coal handling building, so I  
8 would not be aware of any specific inspections or  
9 anything going on.

10 Q. Did you ever observe any of the inspectors in  
11 the area of the quenching tower?

12 MR. PIAGGIONE: Objection, your Honor.

13 Again, he said he was not aware of where they were.

14 THE COURT: No. He said he was aware that  
15 they came from time to time.

16 MR. PIAGGIONE: Now, he's asking him  
17 specifically did he see them someplace. He's  
18 already answered that question.

19 THE COURT: Okay. I'll permit it.

20 Overruled.

21 BY MR. PERSONIUS:

22 Q. It's just the one question.

23 Did you ever observe any of the DEC inspectors  
24 in the area of either quench tower?

25 A. No.



1 MR. PERSONIUS: Your Honor, may I have a  
2 minute, please?

3 THE COURT: Certainly.

4 MR. PERSONIUS: Your Honor, thank you.  
5 Those are all the questions we have.

6 Thank you, Mr. Snyder.

7 THE WITNESS: You're welcome.

8 THE COURT: Okay, Mr. Personius.

9 Mr. Linsin.

10 MR. LINSIN: Thank you, your Honor.

11 CROSS-EXAMINATION BY MR. LINSIN:

12 Q. Good morning, Mr. Snyder.

13 A. Good morning.

14 Q. I don't believe we've met before. My name is  
15 Greg Linsin. I represent Tonawanda Coke.

16 A. Good morning.

17 Q. Mr. Snyder, you -- is it accurate to say that  
18 even though you didn't interact with these DEC  
19 regulators when they came out to the plant, you  
20 knew some of them by name?

21 A. No, not -- not when I was employed there. I  
22 never knew anyone by name.

23 Q. Did you know Mr. Larry Sitzman?

24 A. No.

25 Q. Did you ever form any opinions about whether or

1 not the DEC inspectors had actually just overlooked  
2 conditions at the plant that you thought to be  
3 problematic?

4 MR. PIAGGIONE: Objection, your Honor. I  
5 don't see the relevance of this testimony. He's  
6 already indicated he didn't know them, and it's way  
7 beyond anything we discussed in direct.

8 THE COURT: Okay. Mr. Linsin.

9 MR. LINSIN: Do you recall --

10 THE COURT: No. Is this beyond the scope  
11 or is it relevant?

12 MR. LINSIN: I do believe it to be  
13 relevant, your Honor, to observations that I  
14 understand this witness made while he was employed  
15 at Tonawanda Coke and statements he has  
16 subsequently made to a private investigator  
17 regarding those observations.

18 THE COURT: So it goes to knowledge to  
19 some extent of the witness with respect to what  
20 he's already testified to?

21 MR. LINSIN: Exactly. Knowledge regarding  
22 these DEC inspectors about which there's already  
23 been testimony, yes.

24 THE COURT: Mr. Piaggione?

25 MR. PIAGGIONE: Yes, your Honor. He's

1       only testified about what happened in the coal  
2       field and with the pad. He's not testified about  
3       anything to do with DEC inspectors dealing with  
4       clean air.

5               THE COURT: Well, you talked about the  
6       quench towers too, I think.

7               MR. PIAGGIONE: Only on cross, your Honor,  
8       when you permitted that to be raised.

9               THE COURT: That opens it up for purposes  
10      of additional examination. So I'll overrule the  
11      objection, and he may inquire, and I'll listen to  
12      any subsequent objections.

13      BY MR. LINSIN:

14      Q. Do you recall being interviewed by a private  
15      investigator, Mr. Tom Thurston?

16      A. Yes.

17      Q. Do you remember talking to Mr. Thurston --

18               MR. PIAGGIONE: Objection, your Honor,  
19      again. We don't have these reports. We don't know  
20      what he's talking about, and he's asking him about  
21      documents which we haven't seen. He's not  
22      indicated any problem with his memory. This is  
23      some sort of out-of-court statement that I don't  
24      know what he's talking about.

25               THE COURT: Mr. Linsin, what are you

1 seeking to do here with --

2 MR. LINSIN: I'm going -- I intend to ask  
3 questions, your Honor, whether this witness  
4 expressed certain opinions during those interviews,  
5 two separate interviews, regarding these DEC  
6 inspectors --

7 THE COURT: It may go to interest in the  
8 outcome of the case, bias, prejudice, and the like?

9 MR. LINSIN: Exactly.

10 MR. PIAGGIONE: We're entitled to that  
11 report then, your Honor, if they're going to ask  
12 him questions about that --

13 THE COURT: On what basis?

14 MR. PIAGGIONE: That investigator, first  
15 of all, is listed as one of their witnesses. If  
16 he's produced a report, we're entitled to see it.  
17 He's going to ask him questions about that report  
18 which we have never seen.

19 MR. LINSIN: I'm simply asking this  
20 witness if it is true or not whether he made  
21 certain statements, and I certainly have a  
22 good-faith basis for asking those questions, your  
23 Honor. I would be happy to share that basis with  
24 the Court. There is no requirement under the rules  
25 that I'm aware of that these reports be shared with

1 the government.

2 THE COURT: As long as your questions are  
3 based on a good-faith basis, and, secondly, do not  
4 contain information that factually is not accurate.  
5 So, I'll permit it, and then we'll go from there.

6 MR. LINSIN: Thank you, your Honor.

7 BY MR. LINSIN:

8 Q. Let's back up a little bit then, Mr. Snyder.  
9 Do you recall talking to Mr. Tom Thurston on two  
10 occasions, one in August of 2010 and one in  
11 September of 2010?

12 A. Yes.

13 Q. And do you recall talking to Mr. Thurston about  
14 your observations and your opinions about the DEC  
15 inspectors that came to inspect the Tonawanda Coke  
16 facility?

17 A. Yes.

18 Q. And do you recall telling Mr. Thurston that it  
19 was your observations that DEC inspectors had  
20 regularly overlooked conditions that you believed  
21 to be problematic?

22 MR. PIAGGIONE: Objection again, your  
23 Honor. He's asking for his opinion as to  
24 observations that were not relevant to what he was  
25 testifying about in this case.

1 THE COURT: No. Overruled. You may  
2 answer.

3 BY MR. LINSIN:

4 Q. Do you recall telling Mr. Thurston that?

5 A. We talked about it, yes.

6 Q. And did you tell Mr. Thurston that you believed  
7 that, in fact, DEC had just dropped the ball in its  
8 regulatory oversight of Tonawanda Coke?

9 A. Yes, I think that's true.

10 MR. LINSIN: I have nothing further, your  
11 Honor. Thank you.

12 THE COURT: Okay. Mr. Piaggione?

13 REDIRECT EXAMINATION BY MR. PIAGGIONE:

14 Q. During your course of employment at Tonawanda  
15 Coke, were you ever working -- did you ever work in  
16 the by-products area?

17 A. Yes.

18 Q. Okay. And did you see the bleeder valve go  
19 off?

20 A. Yes.

21 Q. Okay. How often did you see it go off?

22 A. Every 20 minutes.

23 Q. Okay. Was that true in 2005?

24 A. Yes.

25 Q. Okay. Was it a practice to place the sludge

1 from the coal tar box on to the pad?

2 A. Yes.

3 MR. PIAGGIONE: Okay. No further  
4 questions.

5 THE COURT: Okay. Mr. Personius,  
6 anything?

7 MR. PERSONIUS: Thank you, no, Judge.

8 THE COURT: All right. Okay. With that,  
9 Mr. Snyder, you are excused. Thank you very much.

10 THE WITNESS: Thank you.

11 MR. MANGO: Your Honor, the government  
12 would call Robert O'Connor.

13 THE COURT: Mr. Witness, if you would come  
14 forward, please, and approach the witness box and  
15 then we'll have you sworn. Okay. If you'd stop  
16 right about there and then rotate and face the  
17 jury.

18 R O B E R T O ' C O N N O R, having been duly sworn  
19 as a witness, testified as follows:

20 THE COURT: Okay. Get comfortable in the  
21 chair, and I'm going to be asking you to speak at  
22 the microphone, because it is friendly. It will  
23 pick you up if you speak in a conversational tone.  
24 Angle towards the jury just a little bit because  
25 you are here to testify for their benefit.

1           If you don't understand a question, ask that it  
2     be repeated, whether it's by the attorneys or me.  
3     Try to answer concisely. If you can do it with a  
4     yes or no and the question calls for that, please  
5     do that. When you volunteer information, that's  
6     sometimes becomes problematic.

7           If there's an objection, wait until I rule on  
8     the objection, and then I will give you  
9     instructions either to complete an answer, start  
10    the answer all over again or wait for another  
11    question. Instructions like that.

12           Do you understand?

13           THE WITNESS: I do, your Honor.

14           THE COURT: Okay. I think if you --  
15    sounds like you're going to carry pretty well. So  
16    state your full name, spell your last name, please.

17           THE WITNESS: My name is Robert O'Connor.  
18    The last name is spelled O, apostrophe, capital  
19    C-O-N-N-O-R.

20           THE COURT: Okay. Thank you very much.

21           Mr. Mango.

22           MR. MANGO: Thank you, your Honor.

23    DIRECT EXAMINATION BY MR. MANGO:

24           Q. Good morning, Mr. O'Connor.

25           A. Good morning.



1 Q. How are you?

2 A. I'm fine. Thank you.

3 Q. Mr. O'Connor, are you currently employed?

4 A. I am.

5 Q. Can you tell the jury how you're employed?

6 A. I'm employed with the New York State Department  
7 of Environmental Conservation.

8 Q. And that goes by DEC, is that right?

9 A. That's right.

10 Q. All right. What is your current job title with  
11 DEC?

12 A. I'm an environmental conservation investigator  
13 with DEC.

14 Q. And where -- where is that position located?

15 A. The position is located in our Buffalo office.  
16 It's a regional office, Region 9. It covers six  
17 counties in Western New York.

18 Q. How long have you been an environmental  
19 conservation investigator?

20 A. I've been with the department as a police  
21 officer for 24 years and as an investigator for the  
22 last eight.

23 Q. Okay. As an investigator, are you -- when you  
24 perform your duties, are you in a uniform or are  
25 you in plain clothes?

1 A. I'm in plain clothes.

2 Q. All right. And can you tell the jury what --  
3 as an environmental conservation investigator, what  
4 your duties are?

5 A. My duties are to investigate allegations of  
6 environmental law, particularly -- all law really  
7 in New York State but focusing on environmental  
8 law.

9 Q. Okay. So you investigate environmental crimes?

10 A. That's correct.

11 Q. And in your job do you work with any non-DEC  
12 law enforcement officials to investigate  
13 environmental crime?

14 A. Yes, I do.

15 Q. Okay. Who do you work with?

16 A. Several other agencies, but one of them would  
17 be the Environmental Protection Agency's Criminal  
18 Investigation Division.

19 Q. Did there come a time, Mr. O'Connor, that you  
20 became involved in a criminal investigation of the  
21 Tonawanda Coke Corporation?

22 A. Yes, there did.

23 Q. And when did that criminal investigation begin?

24 A. It began in October of 2009.

25 Q. Okay. How did the criminal investigation

1 begin?

2 A. It began with a newspaper article in the  
3 Buffalo News. It was a Sunday article. It was a  
4 feature article. It was a front page article.  
5 Relating to the air study that had been going on in  
6 that area and some other issues with air pollution  
7 in the town of Tonawanda area.

8 Q. Okay. And as a result of that newspaper  
9 article, what -- what happened then?

10 A. Well, after that article appeared, there was a  
11 meeting with representatives from my department,  
12 representatives from the Environmental Protection  
13 Agency's Criminal Investigate Division, and the  
14 U.S. Attorney's office.

15 Q. All right. Was there any involvement by civil  
16 EPA or civil DEC in initiating that -- that initial  
17 meeting?

18 A. No, there wasn't.

19 Q. And how about in initiating the criminal case  
20 in general, was there any involvement by the civil  
21 regulators?

22 A. No.

23 Q. Okay. What was -- after this meeting, what was  
24 the next step in the criminal investigation?

25 A. Well, after that meeting, the next step was to

1 gather information, to talk to witnesses, to review  
2 files, that kind of thing.

3 Q. Okay. During the -- then the course of the  
4 criminal investigation preceded from that point on?

5 A. It did.

6 Q. All right. During the criminal investigation,  
7 do you know if the details of the criminal  
8 investigation were shared with civil EPA or civil  
9 DEC officials?

10 MR. PERSONIUS: Excuse me. I'm sorry.  
11 This witness can testify as to what he knows.

12 THE COURT: And that's the question I  
13 think and it calls for a yes or no. No?

14 MR. LINSIN: Your Honor, the question was  
15 much broader as I heard it. It was does he know  
16 whether anyone -- it was open-ended. Does he know  
17 whether information was shared. I think he's  
18 competent to testify whether he shared information.

19 THE COURT: Well, repute the question. I  
20 mean, I think it's okay the way it was, but put it  
21 anyway --

22 MR. MANGO: Yes, your Honor.

23 THE COURT: -- again.

24 BY MR. MANGO:

25 Q. Mr. O'Connor, during your involvement in the

1 criminal case, did you share any details with your  
2 civil counterparts at DEC?

3 A. No, I did not.

4 Q. Did you share any information with the civil  
5 regulators at EPA?

6 A. No.

7 Q. Okay. Do you know -- just a yes-or-no answer.  
8 Do you know if any other members of the criminal  
9 investigative team shared any details of the  
10 criminal investigation with those individuals?

11 A. I don't know that for a fact. I don't know  
12 that they did or didn't.

13 Q. Okay. Let's talk.

14 Do you recall what, if anything, happened on  
15 December 17th of 2009?

16 A. I do. I recall that on that date there was a  
17 search warrant executed at the Tonawanda Coke  
18 Corporation.

19 Q. All right. And that search warrant, were you a  
20 part of that search warrant?

21 A. I was.

22 Q. Okay. And was criminal -- or the EPA CID,  
23 which meant criminal investigation division,  
24 involved?

25 A. They were primarily involved.

1 Q. Are you aware of whether photographs were taken  
2 during the search warrant?

3 A. Yes, I am. There were many photographs taken  
4 that day.

5 Q. Okay. I'd like to show you just a couple at  
6 this point.

7 Your Honor, I'd like to pull up for  
8 identification purposes Government Exhibit 115.07,  
9 and absent an objection, I would offer this into  
10 evidence.

11 MR. LINSIN: No objection, your Honor.

12 THE COURT: Okay.

13 MR. PERSONIUS: No objection, Judge.

14 THE COURT: All right. 115.07 received,  
15 no objection, and may be published.

16 (Government Exhibit 115.07 was received  
17 into evidence.)

18 MR. MANGO: Thank you, your Honor.

19 BY MR. MANGO:

20 Q. Mr. O'Connor, do you see what is on your  
21 screen?

22 A. I do.

23 Q. What is that depicted?

24 A. That's a picture of the eastern quench tower at  
25 Tonawanda Coke which is also known as tower number

1 2.

2 Q. Okay. And this was taken during the search  
3 warrant?

4 A. It was.

5 Q. All right. Let me show you, for identification  
6 purposes, Government's Exhibit 115.09.

7 THE COURT: Let me ask you this: Was  
8 there a photograph that you took from somewhere?  
9 Is this the photograph you took, or did you take  
10 this photograph with the camera?

11 THE WITNESS: I did not take this  
12 particular photograph, your Honor.

13 THE COURT: So that was somewhere and you  
14 took the photograph itself, right?

15 THE WITNESS: No, I didn't take the photo.  
16 I'm aware that it was taken there by another  
17 person.

18 THE COURT: All right. Did this exist  
19 when you executed the search warrant, this photo?

20 THE WITNESS: This was the condition of  
21 the -- that's what it looked like.

22 THE COURT: Okay. Thank you.

23 Yes, Mr. Linsin?

24 MR. LINSIN: Just if I could make sure I  
25 understand. This is a photograph taken by the

1 agents during the execution of the search warrant.

2 Do I --

3 THE COURT: From someplace.

4 MR. LINSIN: Yes.

5 THE COURT: Is that right?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Thank you.

8 MR. MANGO: Yes, your Honor. I think the  
9 question -- I'll clarify.

10 BY MR. MANGO:

11 Q. This photograph was taken during the execution  
12 of the search warrant at the Tonawanda Coke  
13 Corporation?

14 A. Yes, it was.

15 Q. Okay. And this fairly and accurately depicts  
16 the quench tower number 2?

17 A. Yes, it does.

18 THE COURT: All right. I'm still a little  
19 bit confused. Was there somebody with a camera  
20 that took this? Or was this an existing photograph  
21 that was seized pursuant to the search warrant?

22 THE WITNESS: This was not seized during  
23 the search warrant. This photograph was taken  
24 during the execution of the search warrant.

25 THE COURT: Okay. Thank you. By some



1 agent that accompanied you?

2 THE WITNESS: That agent accompanied me  
3 during the day on the warrant, but I wasn't  
4 physically present when the photo was taken.

5 THE COURT: Okay.

6 MR. PERSONIUS: I think it -- just the  
7 last step in this, Judge. I think it should -- it  
8 should be established that at some point that day  
9 Mr. O'Connor saw this quench tower. I think.

10 THE COURT: All right. Thank you.  
11 Mr. Mango.

12 MR. MANGO: Yes, your Honor.

13 BY MR. MANGO:

14 Q. Mr. O'Connor, did you see quench tower number 2  
15 on that day?

16 A. I did.

17 Q. Okay. And does this picture accurately depict  
18 quench tower number 2 that you saw?

19 A. That's the way it looked that day.

20 Q. All right.

21 THE COURT: All right. Do you want this  
22 published? It's received. No objection?

23 MR. LINSIN: No objection.

24 MR. PERSONIUS: No objection, your Honor.

25 BY MR. MANGO:

1 Q. Oh, if we can actually go back. Okay. 115.07  
2 is now up on the screen and, again, tell the jury  
3 what they're looking at here.

4 A. That's the eastern quench tower or quench tower  
5 number 2 in the Tonawanda Coke Corporation.

6 Q. Okay. Are you, Mr. O'Connor --

7 We can take that down. Thank you, Lauren.

8 Let me ask you: Are you familiar with whether  
9 that quench tower had a baffle system in place  
10 during the execution of the search warrant?

11 A. On the day I was there, there were baffles in  
12 that quench tower.

13 Q. Okay. Did you make an observation of that?

14 A. Yes, I did.

15 Q. Okay. I'd like to show you, for identification  
16 purposes, Government Exhibit 115.09.

17 And absent an objection, offer this into  
18 evidence, your Honor.

19 MR. LINSIN: No objection, your Honor.

20 MR. PERSONIUS: No objection, your Honor.

21 THE COURT: Okay. 115.09 received, no  
22 objection, and may be published.

23 MR. MANGO: Yes, your Honor. Thank you.

24 (Government Exhibit 115.09 was received  
25 into evidence.)

1 BY MR. MANGO:

2 Q. Mr. O'Connor, can you tell the jury what we're  
3 looking at in 115.09?

4 A. This is a photograph that depicts the baffles  
5 in the second quench tower, quench tower number 2,  
6 from inside the tower looking upward.

7 Q. And this is -- fairly and accurately represents  
8 what you saw inside the quench tower?

9 A. That's correct.

10 THE COURT: All right. Tap the photograph  
11 where you say there are baffles depicted. With  
12 authority. That's one baffle?

13 THE WITNESS: I'm sorry, your Honor. I  
14 didn't understand your question.

15 THE COURT: Yeah. Tap the screen where  
16 you say there are baffles depicted.

17 THE WITNESS: There are several of them.  
18 It's not just one --

19 THE COURT: Okay. Outline it, if you  
20 want. Okay.

21 BY MR. MANGO:

22 Q. Mr. O'Connor, are baffles composed of -- do you  
23 know what baffles are?

24 A. Yes.

25 Q. And what are they?

1 A. In this case they're basically wooden boards  
2 that are inserted on an angle.

3 Q. Okay. So these -- these boards we see here,  
4 going that way, are those the baffles you're  
5 referring to?

6 A. Those are some of them, yes.

7 Q. Okay.

8 MR. MANGO: I'd like to show you for  
9 identification purposes, your Honor, Government  
10 Exhibit 115.25, and absent an objection, offer this  
11 into evidence.

12 Well, maybe actually if I can -- I'd like to  
13 ask a couple questions first, your Honor.

14 THE COURT: Sure.

15 BY MR. MANGO:

16 Q. Mr. O'Connor, do you know if there's a second  
17 quench tower at the Tonawanda Coke plant?

18 A. There are two quench towers there.

19 Q. Did you make any observations as to the other  
20 quench -- we were talking about quench tower number  
21 2. Let's talk about quench tower -- what's the  
22 other one called?

23 A. The other one is quench tower number 1 or the  
24 western quench tower.

25 Q. Did you make any observations of that quench

1 tower?

2 A. I did.

3 Q. And did you observe any baffles inside of that  
4 quench tower?

5 A. On that day, the day I was there, I did not  
6 observe any baffles in quench tower number 1.

7 MR. MANGO: At this point now, your Honor,  
8 I'd like to show the witness, for identification  
9 purposes, Government Exhibit 115.25 and absent an  
10 objection, offer that into evidence.

11 MR. LINSIN: No objection, Judge.

12 MR. PERSONIUS: No objection, your Honor.

13 THE COURT: Okay. Then 115.25 received,  
14 no objection, and may be published.

15 (Government Exhibit 115.25 was received  
16 into evidence.)

17 BY MR. MANGO:

18 Q. Mr. O'Connor, can you tell the jury what  
19 they're looking at in Government Exhibit 115.25?

20 A. This is a picture of the western quench tower  
21 from inside the tower looking up. And it depicts  
22 an area at the top of the quench tower where there  
23 are no baffles.

24 Q. All right. And let's -- if we can pull up for  
25 identification purposes Government Exhibit 115.29.

1 And absent an objection, offer that into evidence.

2 MR. LINSIN: No objection, Judge.

3 MR. PERSONIUS: No objection, your Honor.

4 THE COURT: Okay. 115.29 received, no  
5 objection, and may be published.

6 (Government Exhibit 115.29 was received  
7 into evidence.)

8 MR. MANGO: Thank you, your Honor.

9 BY MR. MANGO:

10 Q. Mr. O'Connor, during the search warrant, did  
11 you make or observe what was known as a concrete  
12 pad at Tonawanda Coke?

13 A. Yes, I did.

14 Q. Now, with respect to what is on our screen  
15 here, Government Exhibit 115.29, can you tell the  
16 jury what they're looking at?

17 A. That depicts what was known as the coal tar pad  
18 in the coal field at the plant.

19 THE COURT: All right. Tap the screen in  
20 terms of where it is or outline it, please. Thank  
21 you.

22 BY MR. MANGO:

23 Q. Okay. Lauren, we can take that down. Thank  
24 you.

25 Mr. O'Connor, I want to talk -- are you aware

1 of whether any documents were seized from the  
2 Tonawanda Coke Corporation during the execution of  
3 the search warrant?

4 A. I am aware there were many documents seized.

5 Q. Okay. I'd like to show you some of those  
6 documents at this point. Okay. All right.

7 I'd like to -- if we could pull up for  
8 identification purposes Government  
9 Exhibit 116.01.00.

10 All right. Do you see that on your screen,  
11 Mr. O'Connor?

12 A. Yes, I do.

13 Q. And could you -- do you identify -- do you know  
14 what this is?

15 A. That's a folder that was obtained from  
16 Defendant Kamholz's office during the course of the  
17 search warrant.

18 Q. Okay. And do you know if there was anything  
19 inside of that folder that -- have you reviewed the  
20 contents of that folder?

21 A. I have reviewed the contents. There were  
22 documents in that folder.

23 Q. Okay. And just -- without going into any other  
24 detail, do you see the label of the tab for the  
25 folder?

1 A. I do.

2 Q. Okay.

3 Your Honor, at this point I would offer  
4 Government Exhibit 116.01.00 into evidence.

5 MR. PERSONIUS: It's one exhibit, right?

6 MR. MANGO: Yes, at this point.

7 THE COURT: All right. Any objection?  
8 Any objection?

9 MR. LINSIN: Just one moment --

10 THE COURT: I'm sorry.

11 MR. LINSIN: -- your Honor. No objection,  
12 your Honor.

13 MR. PERSONIUS: No objection, your Honor.

14 THE COURT: Okay. 116.01.00, no  
15 objection. May be received and published.

16 (Government Exhibit 116.01.00 was received  
17 into evidence.)

18 MR. MANGO: Thank you, your Honor.

19 BY MR. MANGO:

20 Q. Mr. O'Connor, I'm going to show you what's on  
21 the screen here. If you could tell the jury -- we  
22 can actually just focus in on this section here.  
23 Is this the folder that you mentioned?

24 A. Yes.

25 Q. You mentioned this was a folder. And the tab



1 of that folder, what does it say?

2 A. It says EPA 114.

3 Q. And is there a date there?

4 A. There is. September 8th, 2009.

5 Q. Okay. And you mentioned that there was some  
6 documents that were inside this folder that you've  
7 reviewed?

8 A. Yes.

9 MR. MANGO: I'd like to pull up  
10 Government's Exhibit 116.01.01 for identification  
11 purposes, your Honor. And absent an objection, I  
12 would offer this into evidence.

13 MR. LINSIN: Could we just clarify, your  
14 Honor, if the witness recognizes this as a document  
15 that came from the folder we just saw?

16 THE COURT: Yes. Okay. Mr. O'Connor, do  
17 you recognize that particular document?

18 THE WITNESS: I do. I've reviewed it.

19 THE COURT: Okay.

20 BY MR. MANGO:

21 Q. And did it come from inside of that folder that  
22 was seized from Defendant Kamholz's office?

23 A. Yes, it did.

24 MR. LINSIN: No objection, your Honor.

25 MR. PERSONIUS: No objection, your Honor.

1 THE COURT: Okay. Then 116.01.01  
2 received, no objection, and may be published.

3 (Government Exhibit 116.01.01 was received  
4 into evidence.)

5 MR. MANGO: Thank you, your Honor.

6 BY MR. MANGO:

7 Q. Mr. O'Connor, can you tell the jury what we're  
8 looking at here in this exhibit? It's two pages  
9 and we can go to the next page if you need to  
10 but --

11 A. It's a shipping document. It's a UPS or United  
12 Parcel Service shipping document. It indicates  
13 that the remittance name is Mark Kamholz, Tonawanda  
14 Coke Corporation, and the address. And that it was  
15 sent to Mr. Kenneth Eng at the U.S. EPA Air  
16 Compliance Branch in New York.

17 Q. Okay. And there's a shipper's signature down  
18 here. What is the date of that shipper's  
19 signature?

20 A. The signature indicates it was signed on -- or  
21 the spot next to the signature indicates that it  
22 was signed on October 7th of 2009.

23 Q. Okay. And there is a weight up at the top.  
24 What does that weight indicate?

25 A. It indicates that it was a 30-pound box that

1 was shipped.

2 Q. All right. I'd like to pull up now Government  
3 Exhibit 116.01.02 for identification purposes and  
4 ask you if you recognize this document as a  
5 document -- I'll just ask you: Do you recognize  
6 this document?

7 A. I do.

8 Q. Do you know where this document came from?

9 A. That also came from the folder you showed me.

10 MR. MANGO: Your Honor, I'd offer  
11 Government Exhibit 116.01.02 into evidence as well.

12 MR. LINSIN: No objection, your Honor.

13 MR. PERSONIUS: No objection, Judge.

14 THE COURT: How do you know those came  
15 from the folder?

16 THE WITNESS: I reviewed the evidence that  
17 was seized during the search warrant and I looked  
18 in that folder.

19 THE COURT: Okay. Thank you. 116.01.02  
20 received, no objection, and may be published.

21 (Government Exhibit 116.01.02 was received  
22 into evidence.)

23 MR. MANGO: Thank you, your Honor.

24 BY MR. MANGO:

25 Q. Mr. O'Connor, this is another UPS shipping

1 label?

2 A. Yes.

3 Q. Or receipt? Okay. Indicates another 30-pound  
4 box as well, is that right?

5 A. It does indicate that it was a 30-pound box,  
6 yes.

7 Q. Okay. So from this -- from this it would  
8 indicate that two 30-pound boxes were sent to the  
9 EPA?

10 A. That's what it indicates.

11 Q. All right. Let's go to Government's  
12 Exhibit 116.01.03 for identification purposes, your  
13 Honor.

14 Mr. O'Connor, do you recognize this document on  
15 your screen?

16 A. I do.

17 Q. Do you know where this document came from?

18 A. It came from the folder that we talked about  
19 earlier marked 116.

20 MR. MANGO: Okay. Your Honor, I'd offer  
21 Government's Exhibit 116.01.03 into evidence.

22 MR. LINSIN: No objection, Judge.

23 MR. PERSONIUS: Just want to confirm,  
24 Judge. Are there more pages to this or just this  
25 one page?

1 MR. MANGO: There are, your Honor.

2 THE COURT: There are more pages?

3 MR. MANGO: Yes. We can scroll through  
4 all of the pages.

5 THE COURT: Please.

6 MR. MANGO: It's ten pages, your Honor.

7 MR. PERSONIUS: No objection, your Honor.  
8 Thank you.

9 THE COURT: Okay. 116.01.03 received, no  
10 objection, and may be published.

11 (Government Exhibit 116.01.03 was received  
12 into evidence.)

13 MR. MANGO: Thank you, your Honor.

14 BY MR. MANGO:

15 Q. If we can zoom in on this portion here.

16 Mr. O'Connor, can you tell the jury what this  
17 document now in evidence, 116.03 -- point 01, I'm  
18 sorry. 116.01.03, is?

19 A. Yes. It looks like it's a cover letter from  
20 Tonawanda Coke Corporation signed by Defendant  
21 Kamholz to Mr. Kenneth Eng who is the chief of the  
22 Air Compliance Branch of the EPA for Region 2 in  
23 New York.

24 Q. Okay. And it indicates that this is in  
25 response to a Section 114 letter?

1 A. It does indicate that, yes.

2 Q. All right. If we can go to the next page.

3 THE COURT: What's a 114 letter, do you  
4 know?

5 THE WITNESS: Are you asking me, your  
6 Honor? It's a response to -- it's a section of law  
7 that requests the -- certain questions of the  
8 corporation and the corporation was responding to  
9 that request.

10 THE COURT: Okay. Thank you.

11 BY MR. MANGO:

12 Q. Page 2 of this exhibit is certification of a  
13 response, is that correct?

14 A. Yes, it is. It's a certification of response.

15 Q. All right. If we can go to page 3, this begins  
16 the -- the actual response section of Mr. Kamholz's  
17 letter, is that right?

18 A. Yes, it does.

19 Q. I'd like to show you at this point Government  
20 Exhibit 116.01.04 for identification purposes, and  
21 ask you -- Mr. O'Connor, this is a multiple-page  
22 document. We can scroll through the pages.

23 Do you recognize this document?

24 A. I do recognize it.

25 Q. And how do you recognize this document?

1 A. I recognize it from my document review of the  
2 material that was seized at the search warrant.

3 Q. Okay. Do you know where this document came  
4 from?

5 A. It came from Defendant Kamholz's office.

6 Q. Okay. In any particular folder?

7 A. The folder 116.

8 Q. Okay. So the folder we've been talking about?

9 A. Yes.

10 MR. MANGO: Your Honor, at this point the  
11 government would offer Government Exhibit 116.01.04  
12 into evidence.

13 THE COURT: Does it consist of three  
14 pages?

15 MR. MANGO: No.

16 THE COURT: How many pages, four?

17 MR. MANGO: There's multiple pages, your  
18 Honor.

19 THE COURT: Let's go through it and  
20 identify the number of pages, please.

21 MR. MANGO: Your Honor, I believe that is  
22 the last page. It's 22 pages in length.

23 THE COURT: Okay.

24 MR. LINSIN: No objection, your Honor.

25 MR. PERSONIUS: No objection, your Honor.

1 THE COURT: Okay. 116.01.04 received, no  
2 objection. May be published.

3 (Government Exhibit 116.01.04 was received  
4 into evidence.)

5 MR. MANGO: Thank you, your Honor.

6 BY MR. MANGO:

7 Q. Mr. O'Connor, can you tell the jury what this  
8 document now in evidence is? We can zoom in if we  
9 need to.

10 A. It's a letter from the EPA to Defendant Kamholz  
11 notifying him of his responsibilities to respond  
12 under certain sections of the law.

13 Q. Is this the 114 letter that EPA sent --

14 A. Yes.

15 Q. -- to Defendant Kamholz? Okay.

16 And if we can scroll through the pages, please.  
17 If we can keep going. And now we get into the  
18 questions that are being asked. If we could stop  
19 right there on page 19.

20 Do you see handwriting on this document?

21 A. Yes, I do.

22 Q. Okay. Do you know whose handwriting this is?

23 A. I don't.

24 Q. Okay.

25 MR. PERSONIUS: Judge, we'll stipulate



1       it's Mr. Kamholz, if it's helpful.

2               MR. MANGO:   Yes.

3               THE COURT:   Okay.   Mr. Linsin?

4               MR. LINSIN:   No objection, your Honor.

5               THE COURT:   Okay.   So stipulated.   The  
6       three entries, the handwritten entries are those,  
7       by stipulation, of defendant Mark Kamholz.

8               MR. MANGO:   Your Honor, and there is other  
9       handwriting on this document.   I would ask the same  
10      questions if we could scroll to the next page.

11              THE COURT:   Same stipulation?

12              MR. PERSONIUS:   Yes, your Honor.

13              MR. MANGO:   And the next page.

14              THE COURT:   Same?

15              MR. PERSONIUS:   Yes, Judge.

16              MR. MANGO:   And the next page.

17              MR. PERSONIUS:   And the page now we're on  
18      is 22 and that is Mr. Kamholz.

19              THE COURT:   Okay.   Thank you.

20              MR. MANGO:   Excellent.

21              THE COURT:   The record will so reflect.

22              MR. LINSIN:   And we would join in that  
23      stipulation.

24              THE COURT:   Okay.   Thank you.

25              MR. MANGO:   Your Honor, at this point I'd

1       like to show the witness Government  
2       Exhibit 116.01.07 for identification purposes.

3             Mr. O'Connor, do you see that document on your  
4       screen?

5             THE WITNESS:   Yes, I do.

6       BY MR. MANGO:

7       Q.   Do you know where this document came from?

8       A.   That's another document that was in the folder  
9       marked 116.

10      Q.   Okay.

11            MR. MANGO:   And that at this point, your  
12      Honor, the government would offer Government's  
13      Exhibit 116.01.07 into evidence.

14            MR. LINSIN:   Are there more -- is there  
15      more than one page to this document?

16            MR. MANGO:   Yes, your Honor.   There's --  
17      this is a number of pages, as well.   It goes for  
18      ten pages.

19            THE COURT:   All right.   Well, let's scroll  
20      through it to get to page 10.   No 11?

21            MR. MANGO:   I believe ten pages, your  
22      Honor.   Yes.

23            THE COURT:   Okay.   Just checking your  
24      math.

25            MR. MANGO:   Thank you.

1 THE COURT: Okay. So no objection?

2 MR. LINSIN: No objection, your Honor.

3 MR. PERSONIUS: No objection, and we'll  
4 stipulate again, Judge, it's Mr. Kamholz's  
5 handwriting.

6 THE COURT: Okay.

7 MR. LINSIN: We will join in that  
8 stipulation.

9 THE COURT: Okay. Stipulation joined.  
10 Government as well?

11 MR. MANGO: Yes, your Honor. We would ask  
12 for that.

13 THE COURT: Okay. Then 116.01.07, no  
14 objection by stipulation, received, and it can be  
15 published.

16 (Government Exhibit 116.01.07 was received  
17 into evidence.)

18 MR. MANGO: Thank you, your Honor.

19 BY MR. MANGO:

20 Q. Mr. O'Connor, can you tell the jury what this  
21 appears to be -- this exhibit appears to be?

22 A. They appear to be handwritten notes that were  
23 generated in responding to the 114 request.

24 Q. Okay. Are you aware of whether in that 114  
25 request from EPA there was any -- any request for

1 information relating to a pressure relief valve or  
2 bleeder valve at Tonawanda Coke?

3 A. In general terms, I think there is a request  
4 for all emission sources.

5 Q. Okay. Well, let's go -- if we could go to  
6 page 6 of this document, please. Let's focus on  
7 that.

8 Do you see entry number 20 there, pressure  
9 release valve?

10 A. Yes, I do.

11 Q. And what I want you to do -- and your Honor, I  
12 may ask to approach the witness because the  
13 handwritten pages of this are going to be easier to  
14 read.

15 Do you see this -- there is a part here that's  
16 struck -- I'm going ask you to read, Mr. O'Connor,  
17 for the jury, this entry under E. And there is a  
18 part that's crossed out here. It maybe easier for  
19 you to read the original handwritten version.

20 Your Honor, may I approach the witness?

21 THE COURT: Yes.

22 BY MR. MANGO:

23 Q. Mr. O'Connor, take your time. I would like you  
24 to read for the jury the entry on E there.

25 A. Twenty marked E, reads as follows: "The PRV

1 opens very rarely. Again, the objective is to" --  
2 I'm not sure what that next word is.

3 MR. PERSONIUS: Judge, we'll stipulate  
4 it's conserve.

5 THE COURT: Okay. "Conserve COG"?

6 MR. PERSONIUS: Yes, Judge. Which is coke  
7 oven gas.

8 THE COURT: Well, keep that paragraph  
9 enlarged. Can you highlight it? Thank you.

10 BY MR. MANGO:

11 Q. Okay. Conserve.

12 A. "To conserve COG for boiler and battery use."

13 MR. LINSIN: Well, your Honor, if we could  
14 also note that there is a word that appears to have  
15 been crossed out after the letters COG.

16 THE COURT: Okay. Can you read that word  
17 that's crossed out?

18 THE WITNESS: It looks like it might be  
19 "not" crossed out, but I really can't tell.

20 THE COURT: Okay.

21 BY MR. MANGO:

22 Q. Okay. Keep going.

23 A. Okay. So again, "the objective is to conserve  
24 COG for boiler and battery use. Should" -- and  
25 then there's another crossed out word -- "the valve

1 open, it would only be for five" -- correction --  
2 "it would only be for 10 to 15 seconds, SEC  
3 period." Then there are some cross outs.

4 MR. PERSONIUS: Well, there is one cross  
5 out.

6 THE WITNESS: Okay. "In this open  
7 position, the PRV would" -- cross out -- "emit COG  
8 at a rate of" -- and then there's no number there.  
9 Then after that, there is pounds, abbreviation for  
10 pounds, LBS slash HR. So it would emit COG at a  
11 rate of an empty space pounds per hour.

12 The next sentence reads: "The PRV valve" --  
13 and there's two words crossed out -- "hasn't opened  
14 in months."

15 BY MR. MANGO:

16 Q. Okay. I want you to focus on in the  
17 handwritten version that cross out that I've just  
18 circled and look -- just take a moment, read the  
19 handwritten version, and see if you can make out  
20 what that word that was crossed out is. Can you do  
21 it?

22 A. I can't make that out.

23 Q. Okay. Let's -- let's go on.

24 I'd like to show you now Government  
25 Exhibit 116.01.08 marked for identification

1 purposes.

2 Do you see that up on your screen,  
3 Mr. O'Connor?

4 A. Yes, I do.

5 Q. Okay. Where did this document come from?

6 A. That came from folder 116.

7 MR. MANGO: Your Honor, at this point the  
8 government would offer Government's  
9 Exhibit 116.01.08 into evidence.

10 MR. LINSIN: No objection, your Honor.

11 MR. PERSONIUS: No objection, your Honor.  
12 We would be willing to stipulate that this  
13 handwriting is Chuck Lauricella, who is an engineer  
14 at Tonawanda Coke, if that's helpful.

15 THE COURT: Government stipulate?

16 MR. MANGO: Yes, your Honor.

17 MR. LINSIN: We would join, your Honor.

18 THE COURT: Okay. Stipulation received  
19 with respect to Lauricella handwriting. 116.01.08  
20 received, no objection, may be published.

21 MR. MANGO: Thank you, your Honor.

22

23 (Government Exhibit 116.01.08 was received  
24 into evidence.)

25 THE COURT: You're welcome.

1 BY MR. MANGO:

2 Q. Mr. O'Connor, do you see this document on your  
3 screen?

4 A. I do.

5 Q. What is -- it mentions coke oven gas flow at  
6 the top?

7 A. It does.

8 Q. Under calculated flow, what is listed for  
9 pounds per hour?

10 A. It says 7,135 -- 7,135 pounds over hours.  
11 Pounds per hour.

12 Q. And finally from this folder I'd like to show  
13 you Government Exhibit 116.01.09 for identification  
14 purposes. Do you recognize this document?

15 A. I do.

16 Q. Do you know where this document came from?

17 A. That came from the folder marked 116.

18 Q. Okay.

19 MR. MANGO: Your Honor, I would offer  
20 Government Exhibit 116.01.09 into evidence.

21 MR. LINSIN: No objection, Judge.

22 MR. PERSONIUS: No objection, your Honor.

23 THE COURT: Okay. 116.01.09 received, no  
24 objection, and may be published.

25 (Government Exhibit 116.01.09 was received



1                   into evidence.)

2                   MR. MANGO: Thank you, your Honor.

3 BY MR. MANGO:

4       Q. Mr. O'Connor, can you tell the jury what we're  
5       looking at here?

6       A. This is an envelope that was addressed to  
7       Mr. Mark Kamholz, manager, environmental control at  
8       the Tonawanda Coke Corporation. It indicates that  
9       it was sent by Harish Patel from the U.S.  
10      Environmental Protection Agency, Region 2  
11      headquarters on Broadway in New York.

12      Q. Okay. Now, in your review of the -- of the  
13      records that were seized from Mr. Kamholz's office,  
14      did you review records that were seized in  
15      proximity to this folder?

16      A. Yes, I did.

17               MR. LINSIN: Your Honor, could we perhaps  
18      establish if this witness was personally involved  
19      in this search of this office? I still don't have  
20      that clear and if we're going to be getting into  
21      those kinds of issues, I think it would be very  
22      helpful to know.

23               THE COURT: Yeah. Let's start with that  
24      and I think we need to take a break. So let's find  
25      out the role here and the personal involvement,

1       please.

2                   MR. MANGO:    Yes.

3   BY MR. MANGO:

4       Q.   Mr. O'Connor, did you -- were you involved in  
5       personally searching Mr. Kamholz's office during  
6       the search warrant?

7       A.   No, I was not.

8       Q.   Okay. Did you -- during the search warrant,  
9       did there come a time when you were in  
10      Mr. Kamholz's office?

11      A.   Yes, there was.

12      Q.   Okay. And based upon your review of the logs  
13      of the search warrant-seized materials, are you  
14      familiar with what materials came out of  
15      Mr. Kamholz's office?

16      A.   Yes, I am.

17                   THE COURT:   Mr. Linsin.

18                   MR. LINSIN:   No dispute to those issues,  
19      your Honor, but when we get into details about  
20      proximity of one document as to another, I still  
21      haven't heard a foundation on that kind of issue.

22                   THE COURT:   All right. I think that's a  
23      legitimate matter for inquiry. If you'll note  
24      that, it may save some time if you establish that  
25      in your questioning.

1 MR. MANGO: Yes.

2 THE COURT: And then we'll go from there.  
3 Okay. I think we need to take 15 minutes. We'll  
4 start at 11:30 actually. Stay right there until  
5 the jury leaves. Thanks.

6 (Jury excused from the courtroom.)

7 THE COURT: Thank you. Okay. We'll see  
8 you at 11:30.

9 MR. MANGO: Yes, your Honor.

10 (Short recess was taken.)

11 MR. MANGO: Judge, if we could have a  
12 moment, I think Mr. Personius is looking through  
13 one of these original folders. Your Honor, if we  
14 could have a just a few more minutes.

15 THE COURT: Absolutely.

16 MR. PERSONIUS: Thank you, Judge. I'll be  
17 very quick.

18 MR. MANGO: I think we're all set, your  
19 Honor.

20 MR. PERSONIUS: Thank you, Judge.

21 THE COURT: You're welcome.

22 (Jury seated.)

23 THE COURT: Welcome back. Please have a  
24 seat. Okay. The attorneys and parties are back  
25 present. The jury is here, roll call waived.

1 Mr. Robert O'Connor is on the stand. He remains  
2 under oath. This still is direct examination by  
3 the government.

4 Mr. Mango, you're the government so you may go  
5 forward.

6 MR. MANGO: Thank you, your Honor.

7 BY MR. MANGO:

8 Q. Mr. O'Connor, where we left off there was a  
9 little bit of a discussion. We've now gone through  
10 the contents of a folder that is in evidence as  
11 116.01.00. Was that right?

12 A. Yes.

13 Q. Okay. Now, did you have a chance to review the  
14 materials that were seized from Mr. Kamholz's  
15 office?

16 A. I did.

17 Q. Okay. And during your review, did you locate  
18 in the -- let me ask it a different way. When you  
19 reviewed those records, did you do those in  
20 Mr. Kamholz's office or at some other location?

21 A. At a later time at the U.S. Attorney's office.

22 Q. That's where the records have been stored, is  
23 that right?

24 A. Yes.

25 Q. Okay. And when you reviewed the records, do

1       you know whether or not they were in substantially  
2       the same order in which they were seized?

3       A.   Yes.

4       Q.   Okay.  And did you have a chance to review  
5       records that were found just after where the folder  
6       we just went through was seized?

7       A.   Yes.

8               MR. LINSIN:  Your Honor, first of all, I  
9       object to the leading, and, second of all, I'm not  
10      even clear where we are right now.  But the basic  
11      objection is leading.

12             THE COURT:  Yeah.  It was, and that was  
13      not a good question.  But kind of set it up so that  
14      we know clearly what this witness observed and  
15      we'll go from there, please.

16             MR. MANGO:  Yes, your Honor.

17      BY MR. MANGO:

18      Q.   If we could just start with an exhibit,  
19      actually.  Let me show you, Mr. O'Connor,  
20      Government Exhibit 116.02.01 marked for  
21      identification purposes.

22             Do you see that document on your screen?

23      A.   I do.

24      Q.   Okay.  Are you familiar with that document?

25      A.   I am.

1 Q. How are you familiar with that document?

2 A. I reviewed it, along with other documents that  
3 were seized during the search warrant.

4 Q. Okay. And where did this document that you're  
5 looking at come from?

6 A. This document came from Defendant Kamholz's  
7 office.

8 MR. MANGO: Your Honor, at this point the  
9 government would offer Government Exhibit 116.02.01  
10 into evidence.

11 MR. LINSIN: Well, your Honor, how many  
12 pages do we have for this exhibit, please?

13 THE COURT: Certainly.

14 MR. MANGO: This is a one-page exhibit,  
15 your Honor. I am intending, and if defense counsel  
16 so chooses, there are other government exhibits  
17 that are identical to these, which range from  
18 Government Exhibit 116.02.01, all the way up to  
19 Government Exhibit 116.02.39, and they're all of  
20 similar character.

21 THE COURT: They're all the bleeder  
22 charts?

23 MR. MANGO: Yes, your Honor.

24 THE COURT: Should we work with all of  
25 them or just this one?

1 MR. LINSIN: I would recommend, unless  
2 there's some other reason counsel wishes to work  
3 through them one at a time. When I saw the  
4 pagination on this exhibit, I assumed that there  
5 were multiple pages for the same exhibit and --

6 THE COURT: Well, okay. Why don't we --  
7 why don't we take them all, 116.02.1 through 116.02  
8 point --

9 MR. LINSIN: They're all .01, your Honor,  
10 it's just --

11 THE COURT: No. .02 and then it goes from  
12 .01 through .30, is that right?

13 MR. MANGO: 39.

14 THE COURT: 39. Did you follow that?

15 MR. LINSIN: I think what we have is  
16 Exhibit Number 116.02.01.

17 THE COURT: Right.

18 MR. LINSIN: They're all 01, and yet the  
19 page numbers after the 01 are 1 through 39, is that  
20 correct?

21 MR. MANGO: No, your Honor. This --  
22 there's only one page of this exhibit on the screen  
23 right now. This -0001, that is it. There's no  
24 dash zero zero zero --

25 MR. LINSIN: I stand corrected, your

1 Honor. Okay.

2 THE COURT: Okay. So it's actually  
3 116.02.01, right? That's the one-page document.

4 MR. MANGO: That's it.

5 THE COURT: Let's get that one in first.  
6 Okay?

7 MR. MANGO: Yes.

8 THE COURT: All right. And then all the  
9 others are individually from 02.02 all the way  
10 through .39.

11 MR. MANGO: Yes.

12 THE COURT: All right.

13 MR. LINSIN: I apologize for the  
14 confusion. Yes, that is correct, your Honor.

15 THE COURT: So no objection,  
16 Mr. Personius, through .39?

17 MR. PERSONIUS: I was just going to --  
18 next time we have a trial together, could we add  
19 another decimal point to these?

20 THE COURT: I know. I know. We don't  
21 have enough of those.

22 As you know, ladies and gentlemen, decimals are  
23 our favorites. All right.

24 And so, Mr. Piaggione, you must have marked  
25 these exhibits, right?



1 MR. PIAGGIONE: I seem to take the blame  
2 for a lot of things, your Honor.

3 THE COURT: And not without deserving it,  
4 Mr. Piaggione.

5 MR. PIAGGIONE: I appreciate that, your  
6 Honor.

7 MR. MANGO: He had nothing to do with it,  
8 your Honor, in fairness.

9 MR. PERSONIUS: No objection, Judge.

10 THE COURT: All right. All right. So  
11 we're going to move, with no objection from  
12 anybody, 116.02.01 which is on the screen now for  
13 Mr. O'Connor to have identified. It will be  
14 received without objection. And you want to  
15 publish that one. And then the next step will be  
16 to get everything else in. Fair enough?

17 MR. MANGO: Yes, your Honor.

18 THE COURT: Okay. Let's do that.

19 MR. MANGO: Thank you. Your Honor, yes,  
20 it is published.

21 (Government Exhibit 116.02.01 was received  
22 into evidence.)

23 BY MR. MANGO:

24 Q. If we could focus just on that so you could  
25 give the jury the date on this chart, please,

1 Mr. O'Connor, that is now in evidence.

2 A. The date on the chart is September 8th, 2009.

3 Q. All right. And again, you mentioned that this  
4 was seized from Defendant Kamholz's office?

5 A. It was.

6 Q. All right. And were there other records  
7 similar to this -- these circular charts that were  
8 seized from Defendant Kamholz's office?

9 A. Yes.

10 Q. Have you reviewed those records?

11 A. Yes.

12 MR. MANGO: Your Honor, at this point,  
13 absent an objection, I would offer the remaining  
14 bleeder circular charts into evidence, which would  
15 be 116.02.02 to .39.

16 THE COURT: Okay. I think we handled all  
17 the decimals in that one, Mr. Personius. Any  
18 objections?

19 MR. PERSONIUS: No. But I think it would  
20 be helpful just to know the date range, please, if  
21 that's not too much.

22 MR. MANGO: Your Honor, for Government  
23 Exhibit 116.02.02, it's September 7th, 2009.

24 MR. PERSONIUS: I don't know need to every  
25 date, just the range.

1 MR. MANGO: Right. It goes backwards. At  
2 .39 is August 1st of 2009.

3 THE COURT: Why do we move backwards,  
4 Mr. Mango?

5 MR. MANGO: These -- your Honor --

6 MR. PIAGGIONE: Your Honor, I'll take the  
7 blame for that.

8 MR. MANGO: These were exactly as they  
9 were seized in the order they were, and I didn't  
10 want to shuffle them around unnecessarily.

11 THE COURT: Actually, that was a  
12 rhetorical question. I didn't really need an  
13 answer.

14 Okay. We'll receive -- and, of course, ladies  
15 and gentlemen, all of this is very serious, and  
16 sometimes we lighten it up just so that we keep  
17 everybody involved. And so I will receive -- and I  
18 think everybody's on board.

19 MR. PERSONIUS: Yes.

20 THE COURT: -- all of these -- we'll call  
21 them circular bleeder chart documents ranging from  
22 116.02.02, that date being December of 2009, right?

23 MR. MANGO: They were seized December  
24 of 2009. There's another date in that description  
25 which would range, again, from September of '09 to

1 August of '09.

2 THE COURT: And that will be inclusive of  
3 116.02.39. All will be received without objection,  
4 and if counsel for the government chooses, he may  
5 publish those documents, as well.

6 MR. MANGO: Yes.

7 THE COURT: Okay.

8 (Government's Exhibit 116.02.02 through  
9 116.02.39 were received into evidence.)

10 MR. MANGO: We could publish -- I'd like  
11 to publish just the first five of them, your Honor,  
12 to give a representative sample. So if we can now  
13 publish 116.02.02, please; 116.02.03, 116.02.04,  
14 and 116.02.05.

15 BY MR. MANGO:

16 Q. So, Mr. O'Connor, have you seen those five  
17 representative examples that were put up on the  
18 screen?

19 A. Yes, I have.

20 Q. Those were the circular bleeder chart documents  
21 that were seized from Defendant Kamholz's office?

22 A. Yes.

23 Q. Okay. I'd like to now show you Government  
24 Exhibit, for identification, 116.03. This is a  
25 one-page document. Ask you to take a look at it.

1           Do you know where this -- or are you familiar  
2           with this document?

3           A.    I am.

4           Q.    And where did this document come from?

5           A.    It was seized from Defendant Kamholz's office  
6           during the search warrant.

7           Q.    All right.

8                     MR. MANGO:   Your Honor, I would ask that  
9           Government Exhibit 116.03 be offered into evidence.

10                    MR. LINSIN:   No objection, your Honor.

11                    MR. PERSONIUS:  No objection, Judge.  And  
12           we'll stipulate the handwriting at the top, the  
13           "ATT 4a" is Mr. Kamholz's handwriting.

14                    THE WITNESS:  Okay.  So stipulated,  
15           Mr. Mango?

16                    MR. MANGO:   Yes, your Honor.

17                    THE COURT:   Mr. Linsin.

18                    MR. LINSIN:   Yes, your Honor.

19                    THE COURT:   Okay.  Thank you.

20                    By stipulation, the handwriting is identified  
21           as Defendant Kamholz's handwriting.  The exhibit  
22           itself will be received without objection and may  
23           be published if you choose to do that, Mr. Mango.

24                    (Government Exhibit 116.03 was received  
25           into evidence.)

1 MR. MANGO: Yes, your Honor, I'd ask to  
2 publish that. If we can zoom in.

3 Mr. O'Connor, do you see that handwriting up  
4 there, the "ATT 4a?"

5 THE WITNESS: Yes, I do.

6 BY MR. MANGO:

7 Q. That is now the subject of the stipulation.

8 So this is a letter that was seized from  
9 Defendant Kamholz's office?

10 A. Yes, it is.

11 Q. Okay. Do you know if that ATT 4a relates to  
12 the 114 letter that we have already gone through?

13 If you need to see that 114 letter, I can show  
14 it to you if you want.

15 A. Would you show it to me, please.

16 Q. Yes, your Honor -- or yes, Mr. --

17 A. I got promoted. That's pretty good.

18 Q. If we could pull up Government  
19 Exhibit 116.01.03, your Honor, in evidence. And go  
20 to the third page of that document. Well, first,  
21 let's start at the first page.

22 Mr. O'Connor, do you recognize this that you've  
23 already identified as the response letter to the  
24 114 to the EPA?

25 A. I do recognize it as that.

1 Q. Okay. If we can back out of that now, and  
2 please go to the third page of this document.

3 And do you see under number 4 which describes a  
4 March 17, 2009, venting? Right here.

5 A. I see that.

6 Q. Okay. Underneath there is an A and it says  
7 Attachment 4a?

8 A. I see that.

9 Q. Now, if we could go back to Government Exhibit  
10 116.03 now in evidence. That ATT 4a was an  
11 attachment to the 114 letter?

12 A. It indicates that.

13 Q. Okay. I'd like to at this point, your Honor,  
14 go to Government's Exhibit 116.06 for  
15 identification purposes.

16 Mr. O'Connor, do you see Government  
17 Exhibit 116.06 on the screen?

18 A. Yes, I do.

19 Q. And are you familiar with that document?

20 A. I am.

21 Q. Where did this document come from?

22 A. That was seized from Defendant Kamholz's  
23 office.

24 MR. MANGO: All right. Your Honor, the  
25 government would move Government Exhibit 116.06

1       into evidence.

2               THE COURT:    Okay.

3               MR. LINSIN:   No objection, your Honor.

4               MR. PERSONIUS:  No objection, your Honor.

5       Again, we will stipulate the "ATT 32a" is

6       Mr. Kamholz's handwriting, Judge.

7               THE COURT:    Okay.    So stipulated,

8       Mr. Mango?

9               MR. MANGO:    Yes, your Honor.

10              THE COURT:    Mr. Linsin?

11              MR. LINSIN:   Yes, your Honor.

12              THE COURT:    Okay.    The entry handwriting  
13       is stipulated as that of Defendant Kamholz.

14              116.06 received, no objection, and may be  
15       published.

16              (Government Exhibit 116.06 was received  
17       into evidence.)

18       BY MR. MANGO:

19       Q.   Mr. O'Connor, do you see this document on your  
20       screen now?

21       A.   Yes, I do.

22       Q.   Okay.   It's a multiple-page document.   On the  
23       first, though -- and you see that which is now the  
24       subject of a stipulation, "ATT 32A," which is the  
25       handwriting of Defendant Kamholz?



1 A. Yes.

2 Q. Okay. Does this -- does this indicate that  
3 this was also part of the 114 attachments?

4 A. It indicates that.

5 Q. Okay. All right. And if you could just read  
6 the letter, is there a reference to an installation  
7 of a flare device in this letter?

8 A. That is the reference in the letter.

9 Q. Okay. If we could scroll through so the jury  
10 can see the rest of the pages that are -- accompany  
11 this exhibit.

12 THE COURT: Would you go back to 7,  
13 please? The stipulation applies to the  
14 handwriting?

15 MR. PERSONIUS: Apparently not, Judge.

16 THE COURT: Okay.

17 MR. PERSONIUS: Thank you for asking.

18 THE COURT: Okay. Thank you.

19 BY MR. MANGO:

20 Q. Thank you, your Honor.

21 I would like to now switch gears, Mr. O'Connor,  
22 and show you a different item.

23 If we could pull up Government Exhibit 117 for  
24 identification purposes.

25 Do you see Government Exhibit 117 on your

1 screen?

2 A. I do.

3 Q. And what is Government Exhibit 117?

4 A. It's a folder.

5 Q. And do you know where this -- was there  
6 anything inside of this folder, if you know?

7 A. Yes. There were documents inside that folder.

8 Q. Do you know where this folder was seized? Let  
9 me -- do you know where this folder came from?

10 A. This folder came from Defendant Kamholz's  
11 office.

12 Q. Okay. When?

13 A. During the search warrant on December 17th,  
14 2009.

15 Q. Okay. And you're familiar with this folder and  
16 its contents?

17 A. I am.

18 Q. Did you review the material?

19 A. I did.

20 MR. MANGO: Your Honor, the government  
21 would offer Government Exhibit 117 into evidence.

22 THE COURT: Just the folder itself, not  
23 the contents?

24 MR. MANGO: At this point I think we're  
25 going to need to move through the contents.

1 THE COURT: Okay.

2 MR. LINSIN: Minor clarification, your  
3 Honor. Was this something the witness also  
4 reviewed in the U.S. Attorney's office as opposed  
5 at the facility on December 17th?

6 THE COURT: Okay. Fair enough. Let's  
7 find out. Ask the question, please.

8 MR. MANGO: Yes, your Honor.

9 Mr. O'Connor, did you review -- did your  
10 familiarity with this folder come from your time at  
11 the search warrant or your review of records at a  
12 later time?

13 THE WITNESS: It came from my review of  
14 records at a later time at the U.S. Attorney's  
15 office.

16 BY MR. MANGO:

17 Q. Excellent. And again, that was a review of the  
18 records that were seized during the search warrant?

19 A. Yes, that's correct.

20 MR. LINSIN: No objection to admission,  
21 your Honor.

22 MR. PERSONIUS: No objection, Judge.  
23 There is some handwriting on the label. We'll  
24 stipulate that's Mr. Kamholz's handwriting.

25 THE COURT: Okay. With that stipulation,

1       that's entered into by you, I take it, Mr. Mango?

2               MR. MANGO: Yes, your Honor. There's  
3 actually some business cards that were stapled on  
4 the inside and there is some handwriting on one of  
5 them. I believe that stipulation may apply to  
6 the -- one of the business cards that has some  
7 handwriting on --

8               THE COURT: It does.

9               MR. PERSONIUS: If we could see it,  
10 please, Judge, on the screen.

11              THE COURT: Sure.

12              MR. MANGO: Go to the next page.

13              MR. PERSONIUS: We stipulate, Judge,  
14 that's Mr. Kamholz's, the "See Martha's card."

15              THE COURT: Yes. Okay. So stipulated and  
16 Mr. Linsin --

17              MR. LINSIN: Yes.

18              THE COURT: -- you're onboard with that?

19              MR. LINSIN: We join in the stipulation.

20              THE COURT: Okay. Then with that  
21 stipulation, 117, the folder and stapled cards on  
22 the interior are admitted without objection, and  
23 may be published if you choose to do that or move  
24 on.

25              MR. MANGO: Yes.

1 (Government Exhibit 117 was received into  
2 evidence.)

3 MR. MANGO: Your Honor, I would ask to  
4 publish for the jury's benefit here.

5 Mr. O'Connor, if you could tell the jury what  
6 is the label on this folder?

7 THE WITNESS: The label says EPA and  
8 inspection, in an abbreviated form. And a date --  
9 I don't know if you can blow that up. 4/14.

10 BY MR. MANGO:

11 Q. Okay. And if we could go to the second page of  
12 this document.

13 Do you see -- what was contained on the second  
14 page of this document?

15 A. Six business cards are stapled inside the  
16 folder.

17 Q. And you see here is the subject of another  
18 stipulation of Defendant Kamholz's handwriting?

19 A. Yes, I see that.

20 Q. Okay. I'd like to now go to some of the  
21 contents of this folder. I'd like to show you the  
22 first one, again. We'll have a series of these,  
23 but,, let's start with Government's  
24 Exhibit 117.01.01 for identification purposes.

25 Mr. O'Connor, are you familiar with this

1 document that's on the screen?

2 A. I am.

3 Q. Okay. And where did this document come from?

4 A. From a folder -- the folder you just showed me,  
5 117.

6 Q. Okay.

7 A. From Defendant Kamholz's office.

8 Q. And you recognize what this is depicting on the  
9 screen, is that fair to say?

10 A. Yes.

11 Q. All right.

12 MR. MANGO: Your Honor, the government  
13 would offer Government's Exhibit 117.01.01, and  
14 there is nine -- I'm sorry -- eight additional of  
15 these records that I would offer into evidence  
16 extending through .08, if there's no objection.

17 MR. PERSONIUS: Could we get a date range  
18 please, Judge?

19 THE COURT: Yes.

20 MR. MANGO: Your Honor, these are -- as  
21 you -- as you referred to them --

22 MR. PERSONIUS: Maybe start with the  
23 oldest date and come to the --

24 MR. MANGO: Circular bleeder chart  
25 documents, I want to use the Court's term, for

1 April 20th, 2009, is the first exhibit. That is  
2 the date latest in time, and the earliest in time  
3 is 4/12 of 2009. And that would be Government  
4 Exhibit 117.01.08.

5 MR. PERSONIUS: 4/12 to 4/19?

6 MR. MANGO: 4/12 to 4/20.

7 MR. PERSONIUS: 4/20, thank you.

8 MR. MANGO: But, your Honor, there are --  
9 there is a few that were missing and are not part  
10 of this series.

11 THE COURT: Okay. But in any event, from  
12 117.01.01 to 117.01.08, is this first offer?

13 MR. MANGO: Yes, your Honor.

14 THE COURT: Okay. Okay. They all are --  
15 or at least appear to be bleeder chart documents,  
16 circular.

17 MR. MANGO: Yes.

18 MR. LINSIN: And all from folder 117, is  
19 that correct?

20 THE COURT: Yes.

21 MR. LINSIN: Yes. No objection, your  
22 Honor.

23 MR. PERSONIUS: No objection, Judge.

24 THE COURT: Okay. No objection, all are  
25 received, and selectively or in totality, they may

1 be displayed or published.

2 (Government Exhibits 117.01.01 through  
3 117.01.08 were received into evidence.)

4 MR. MANGO: Yes, your Honor. I would ask  
5 to just publish the first five representative  
6 charts here, as well.

7 BY MR. MANGO:

8 Q. This is -- Mr. O'Connor, do you see on your  
9 screen 117.01.01?

10 A. Yes, I do.

11 Q. Bleeder chart for 4/20 of '09?

12 A. I can't see the date on -- yes, 4/20/09.

13 Q. And if we could go to 117.01.02. And again, we  
14 can zoom in on the date.

15 Is that a bleeder chart for April 19th of 2009?

16 A. Yes, it is.

17 Q. If we can go to 117.01.03.

18 What is this document?

19 A. That's a circular bleeder chart for 4/18/09.

20 Q. Okay. 117.01.04.

21 Do you recognize this as a bleeder chart for  
22 April 17th of 2009?

23 A. Yes, I do.

24 Q. And finally 117.01.05.

25 Do you recognize this as a bleeder chart for



1 April 16th of 2009?

2 A. Yes, I do.

3 Q. Okay.

4 MR. MANGO: I'd like at this point to pull  
5 up for identification purposes Government  
6 Exhibit 117.05 for identification purposes.

7 Your Honor, this is a multiple-page document.  
8 It may make sense to scroll through for the -- so  
9 the witness can see this, the whole page.

10 THE COURT: How many pages?

11 MR. MANGO: Your Honor, I believe it's  
12 just two pages.

13 THE COURT: Okay. You've had a chance to  
14 look at both of those, Mr. O'Connor?

15 THE WITNESS: Yes, your Honor.

16 THE COURT: Thank you. Okay. Go ahead.

17 BY MR. MANGO:

18 Q. Do you see this document on your screen?

19 A. I do.

20 Q. Where -- are you familiar with this document?

21 A. I am.

22 Q. Where did this document come from?

23 A. It came from folder -- the folder that's marked  
24 117 which came from Defendant Kamholz's office.

25 Q. Okay.

1 MR. MANGO: Your Honor, the government  
2 would offer Government Exhibit 117.05 into  
3 evidence.

4 MR. LINSIN: No objection, Judge.

5 MR. PERSONIUS: No objection, your Honor.  
6 We will stipulate it is Mr. Kamholz's handwriting  
7 on both pages.

8 THE COURT: Okay. Stipulation entered,  
9 Mr. Mango?

10 MR. MANGO: Yes, your Honor.

11 THE COURT: Mr. Linsin?

12 MR. LINSIN: We join in the stipulation.

13 THE COURT: Okay. Writing stipulated. No  
14 objection to the Exhibit 117.05, received, and may  
15 be published.

16 MR. MANGO: Thank you, your Honor.

17 (Government Exhibit 117.05 was received  
18 into evidence.)

19 BY MR. MANGO:

20 Q. Mr. O'Connor, I'd ask you to take a look at  
21 this document that's now up on your screen. Let's  
22 just focus on this top portion here.

23 What is this that we appear to be looking at?

24 A. They appear to be handwritten notes from the  
25 inspection in April of 2009.

1 Q. Okay. I'd like you to just take a look at this  
2 section here, and if you can read it for the jury,  
3 please.

4 A. It says A.M. review of power outage.

5 Q. I'm sorry. Just -- you can even just start  
6 with those two lines.

7 A. The highlighted section says, "Got Pat to talk  
8 about" -- I might be able to see if you could  
9 remove the highlight maybe. There is one word  
10 I'm -- there is a word there that I really can't  
11 make out. But what I can make out is: "I got Pat  
12 to talk about" -- then I can't read it --  
13 "bleeder."

14 BY MR. MANGO:

15 Q. Okay. That's okay. I don't want you to --

16 THE COURT: Well, can you read the last  
17 portion or not?

18 THE WITNESS: I can read a couple of the  
19 words in the last portion.

20 THE COURT: Yeah. Finish it off to the  
21 extent that you can read it, please.

22 THE WITNESS: I can read the word "about."  
23 And then I think the word "week of." Those are the  
24 words I can make out in the second portion.

25 THE COURT: Okay. Let's stop there. This

1 page was dated April 21st, I think, right?

2 MR. MANGO: Yes, your Honor.

3 THE COURT: Okay. Of '09.

4 MR. MANGO: Yes, your Honor.

5 BY MR. MANGO:

6 Q. Okay. At this point I'd like to pull up for  
7 identification purposes Government  
8 Exhibit 117.06.01.

9 Which, Mr. Conway, do you see that on your  
10 screen now? Mr. Conway. I'm sorry, Mr. O'Connor.

11 A. Yes. I do see that on my screen.

12 THE COURT: We respond to any name, it  
13 doesn't matter.

14 MR. MANGO: I know.

15 BY MR. MANGO:

16 Q. I'm sorry. Mr. O'Connor, do you see that on  
17 your screen?

18 A. Yes, I do.

19 Q. Okay. What is that document that you -- or  
20 where did this document come from that's on your  
21 screen?

22 A. That document came from the folder marked 117  
23 that came from Defendant Kamholz's office during  
24 the search warrant.

25 Q. Okay. And do you know -- let me also show you

1 117.06.02 which is marked separately, but also has  
2 a notation up at the top.

3 Do you know if these two pages, the two  
4 exhibits that I've now just showed you, relate to  
5 each other?

6 A. They appear to be pages 1 and 2 of the notes.

7 Q. And this exhibit that I'm showing you,  
8 117.06.02, where did this document come from?

9 A. That also came from the folder marked 117 taken  
10 during the search warrant from Defendant Kamholz's  
11 office.

12 Q. Okay. Thank you.

13 MR. MANGO: Your Honor, I would offer both  
14 of these exhibits into evidence, 117.06.01 and 02.

15 MR. LINSIN: No objection, your Honor.

16 MR. PERSONIUS: No objection, your Honor.  
17 We stipulate that the handwriting is Mr. Kamholz's.

18 THE COURT: So stipulated, Mr. Mango?

19 MR. MANGO: Yes, your Honor.

20 THE COURT: And Mr. Linsin?

21 MR. LINSIN: So stipulated.

22 THE COURT: Okay. Handwriting stipulated;  
23 that is, that it is the handwriting of Defendant  
24 Mark Kamholz. 117.06.01 and .02 both received  
25 without objection and may be published.

1 (Government Exhibit 117.06.01 and  
2 117.06.02 were received into evidence.)

3 MR. MANGO: Thank you, your Honor.

4 BY MR. MANGO:

5 Q. If we could go back to the first page and just  
6 publish the first page for the jury so they can see  
7 this.

8 Mr. O'Connor, these are the -- do you recognize  
9 these as what appear to be notes?

10 A. Yes.

11 Q. Okay. And there is a date up at the top, is  
12 that right?

13 A. Yes. The date is 4/20/09.

14 Q. All right. And if we could just go to the  
15 second page, just so the jury can see this.

16 Again, a 4/20 at the top?

17 A. Yes.

18 Q. I'd like to now go for identification purposes  
19 to Government Exhibit 117.09 for identification  
20 purposes.

21 Do you see that document on your screen,  
22 Mr. O'Connor?

23 A. Yes.

24 Q. And do you know where this document came from?

25 A. Also came from folder 117.

1 Q. All right. Which was seized during the search  
2 warrant from Defendant Kamholz's office?

3 A. Yes.

4 MR. MANGO: Your Honor, I would offer  
5 Government Exhibit 117.09 into evidence.

6 MR. LINSIN: No objection, your Honor.

7 MR. PERSONIUS: No objection, Judge. We  
8 stipulate it's Mr. Kamholz's handwriting again.

9 THE COURT: Okay. So stipulated,  
10 Mr. Mango?

11 MR. MANGO: Yes.

12 THE COURT: Mr. Linsin?

13 MR. LINSIN: So stipulated.

14 THE COURT: Okay. Handwriting stipulated  
15 as that of defendant Mark Kamholz. The  
16 Exhibit 117.09 received, no objection, and may be  
17 published.

18 MR. MANGO: Thank you, your Honor.

19 (Government Exhibit 117.09 was received  
20 into evidence.)

21 BY MR. MANGO:

22 Q. Mr. O'Connor, do you see this document here on  
23 your screen?

24 A. Yes.

25 Q. Okay. Keep this document in mind. We're going

1 to look at another document in a moment, and I want  
2 you to just keep this in your mind.

3 If we can now go to Government Exhibit 117.10  
4 for identification purposes.

5 Do you see this document on your screen,  
6 Mr. O'Connor?

7 A. Yes.

8 Q. And where did this document come from?

9 A. That document came from folder 117, which was  
10 seized during the search warrant from Defendant  
11 Kamholz's office.

12 Q. Okay. Thank you.

13 MR. MANGO: Your Honor, the government  
14 would offer 117.10 into evidence at this point.

15 MR. LINSIN: No objection.

16 MR. PERSONIUS: No objection. We can only  
17 stipulate here, Judge, that the "Mark Kamholz"  
18 entry is Mr. Kamholz's handwriting.

19 THE COURT: That stipulation is acceptable  
20 to the government?

21 MR. MANGO: Yes, your Honor.

22 THE COURT: Okay. And Mr. Linsin, as  
23 well?

24 MR. LINSIN: Yes, your Honor.

25 THE COURT: Just the Kamholz name is



1 identified and stipulated to as that of defendant  
2 Mark Kamholz's writing. But with respect to the  
3 entire exhibit, 117.10 is received, no objection,  
4 and may be published.

5 (Government Exhibit 117.10 was received  
6 into evidence.)

7 MR. MANGO: Thank you, your Honor.

8 BY MR. MANGO:

9 Q. Mr. O'Connor, do you see what's on your screen?

10 A. Yes, I do.

11 Q. Is it labeled at the top "opening conference"?

12 A. Yes, it is.

13 Q. All right. Your Honor, at this point I would  
14 like to pull up Government Exhibit 117.11 for  
15 identification purposes.

16 Mr. O'Connor, do you see that document on your  
17 screen?

18 A. Yes, I do.

19 Q. And what is -- where did this document come  
20 from?

21 A. That document came from folder 117 which was  
22 seized during the search warrant, and it came from  
23 Defendant Kamholz's office.

24 MR. MANGO: Your Honor, the government  
25 would move Government Exhibit 117.11 into evidence

1       which is, in reality, the same copy that I believe  
2       Government Exhibit 26, if my memory serves -- or  
3       29. If I could have a moment.

4               Twenty-nine. Yes, your Honor. I would move  
5       Government Exhibit 117.11 into evidence.

6               MR. LINSIN: No objection.

7               MR. PERSONIUS: No objection, your Honor.

8               THE COURT: Okay. And that document is  
9       the TCC organizational chart. 117.11 will be  
10      received, no objection.

11              MR. MANGO: Thank you, your Honor.

12              (Government Exhibit 117.11 was received  
13      into evidence.)

14              THE COURT: You're welcome.

15              MR. MANGO: I'd ask that it be published.

16              And Mr. O'Connor, do you see the document here  
17      on your screen?

18              THE WITNESS: Yes, I do.

19      BY MR. MANGO:

20              Q. And this is the Tonawanda Coke organizational  
21      chart according to the title at the top?

22              A. Yes.

23              Q. I'd like to move now, your Honor, to Government  
24      Exhibit 117.12 for identification purposes.

25              THE COURT: That was already received.

1 MR. MANGO: Yes, I just -- into evidence.  
2 If we could just publish it at this point. I just  
3 want to ask a follow-up question to make it clear  
4 where this document came from.

5 BY MR. MANGO:

6 Q. Mr. O'Connor, do you see this document on your  
7 screen which has previously been admitted into  
8 evidence?

9 A. I do see it on the screen.

10 Q. Where -- where did this document come from?

11 A. This document came from the folder marked 117  
12 which was seized during the search warrant and came  
13 from Defendant Kamholz's office.

14 Q. Okay. And let's just focus on this top portion  
15 here. And with particular attention to part one,  
16 "please have these documents available," and there  
17 is a one, a two, a three.

18 Do you see that?

19 A. Yes, I do.

20 Q. Okay. A, B, C, D, E subparts there.

21 A. I see A, B, C, D and E subparts for number one,  
22 yes.

23 Q. Okay. We can actually come out of this -- your  
24 Honor, there is some handwriting on the second page  
25 of this document which at the time it was

1 introduced was unknown. I believe there may be a  
2 stipulation.

3 MR. PERSONIUS: Your Honor, we'll  
4 stipulate that's Mr. Kamholz's handwriting and then  
5 there were check marks on the first page that  
6 Mr. Kamholz put there, if that's important.

7 THE COURT: Okay. So stipulated,  
8 Mr. Linsin?

9 MR. LINSIN: Yes. We join in that, your  
10 Honor.

11 THE COURT: Are you joining, as well?

12 MR. MANGO: Yes, your Honor.

13 THE COURT: Okay. Stipulation establishes  
14 the check marks and the handwriting as that of  
15 defendant Mark Kamholz.

16 MR. MANGO: Thank you. If we could go  
17 back to the first page. So that part one with the  
18 number 1 and then the A through E subparts, keep  
19 that in mind. And let's go back now --

20 THE COURT: Wait, wait. Put those up  
21 first.

22 BY MR. MANGO:

23 Q. Yes. Mr. O'Connor, have you had a chance to  
24 look at that?

25 A. Yes.

1 Q. Okay. Let's go back now, if we could, in  
2 evidence Government Exhibit 117.09. And you  
3 mentioned this came from the same folder as the  
4 other Exhibit 117.12.

5 Does this appear to have any relation to  
6 Government Exhibit 117.12?

7 A. It does appear to correspond to that.

8 THE COURT: All right. Could you split  
9 screen this?

10 MR. MANGO: We could, yes, your Honor.  
11 Let's do 117.09 on the left and 117.12 on the  
12 right.

13 BY MR. MANGO:

14 Q. Mr. O'Connor, you believe there is some  
15 correlation between these two exhibits?

16 A. Yes, I do.

17 THE COURT: Just leave them there for a  
18 minute.

19 MR. MANGO: Yes; which are both admitted.

20 THE COURT: Yes.

21 MR. MANGO: Finally, from this folder, I'd  
22 like to go to Government Exhibit 117.13 for  
23 identification purposes.

24 THE COURT: That's also received into  
25 evidence.

1 MR. MANGO: And received into evidence.

2 Thank you, your Honor. And I'd ask that that be  
3 published for the jury.

4 BY MR. MANGO:

5 Q. And just for clarification purposes to this  
6 already admitted exhibit, Mr. O'Connor, do you know  
7 where this Exhibit 117.13 came from?

8 A. Yes, I do. It came from a folder which is  
9 marked 117. The folder was seized during the  
10 search warrant at Tonawanda Coke from Defendant  
11 Kamholz's office.

12 Q. All right. I'd now like to move for -- are you  
13 aware whether any --

14 We can take that down, Lauren. Thank you.

15 Are you aware of any other folders that were  
16 seized from Defendant Kamholz's office?

17 A. Yes, I am.

18 Q. Okay. I'd like to pull up for identification  
19 purposes, your Honor, Government Exhibit 118.

20 THE COURT: Okay.

21 BY MR. MANGO:

22 Q. Mr. O'Connor, do you see this on your screen  
23 here?

24 A. Yes, I do.

25 Q. And were there any items inside of -- well, let

1 me ask you first: What do you see on your screen?

2 What is this?

3 A. It's a copy of a folder, and there is a title  
4 on the tab of the folder.

5 Q. Okay.

6 A. If you could --

7 MR. PERSONIUS: Your Honor, this gets into  
8 an area that we object to.

9 THE COURT: We talked about this earlier.

10 MR. PERSONIUS: Yes. Yes.

11 MR. LINSIN: We object on relevance  
12 grounds, your Honor, and 403 grounds, as well.

13 THE COURT: Okay. I think the discussion  
14 we had on the record supports the respective  
15 positions. I'm going to overrule the objection.  
16 I'll allow you to proceed.

17 MR. MANGO: Thank you, your Honor.

18 BY MR. MANGO:

19 Q. At this point, do you recognize this -- let's  
20 just back up for a moment. Do you recognize this  
21 folder -- or what this is? I'm sorry. I think you  
22 mentioned it's a copy of a folder.

23 A. I do recognize it.

24 THE COURT: All right. And this related  
25 to the enhanced knowledge issue?

1 MR. MANGO: Yes, your Honor.

2 THE COURT: Okay.

3 MR. MANGO: And there's only one item from  
4 inside this folder that we'll be going into.

5 Mr. O'Connor, what -- where did this folder  
6 come from?

7 THE WITNESS: This came from Defendant  
8 Kamholz's office.

9 BY MR. MANGO:

10 Q. Were there any items inside of this folder that  
11 you reviewed?

12 A. Yes, there were.

13 Q. And again, did you make this review at the time  
14 of the search warrant or during your subsequent  
15 review at the U.S. Attorney's office?

16 A. I made the review during a subsequent time at  
17 the U.S. Attorney's office.

18 Q. Okay.

19 Your Honor, the government would move  
20 Government Exhibit 118, just the folder at this  
21 point, into evidence.

22 MR. LINSIN: I believe our objection has  
23 been overruled, your Honor.

24 THE COURT: Yes.

25 MR. PERSONIUS: Yes, but we have to



1 object.

2 THE COURT: All right. 118 received, over  
3 objection, and may be published if you choose to do  
4 that.

5 MR. MANGO: Yes, please, your Honor.

6 (Government Exhibit 118 was received into  
7 evidence.)

8 BY MR. MANGO:

9 Q. Okay. Mr. O'Connor, do you see this document  
10 that's now on your screen?

11 A. Yes, I do.

12 Q. Okay. Can you read the tab that is on this  
13 folder for the jury, please?

14 A. It says "Clean Air Coalition," and underneath  
15 that it says "citizens enviro" and then a word that  
16 looks like it could be coalition.

17 THE COURT: Ms. DiFillipo, would you  
18 enlarge that -- okay. Thank you.

19 BY MR. MANGO:

20 Q. Okay. Do you know if there were any documents  
21 inside of this folder?

22 A. Yes. I do know that were there were several.

23 Q. Just with a generality of what was in this  
24 folder, can you tell the jury, please?

25 A. There were several newspaper articles, and some

1 notices of meetings.

2 Q. Okay. I'd like to show you one of those  
3 newspaper articles.

4 If we could go for identification purposes to  
5 Government Exhibit 118.01, and ask you if you  
6 recognize this?

7 A. Yes, I do recognize it.

8 Q. Okay. And where did this item that you see on  
9 your screen come from?

10 A. It came from inside that folder marked 118.

11 MR. MANGO: All right. Your Honor, the  
12 government would move Government Exhibit 118.01  
13 into evidence.

14 THE COURT: As a document included in the  
15 file?

16 MR. MANGO: Yes, your Honor. I believe  
17 that was his testimony. It is two pages. If we  
18 want to go to the second page, as well.

19 THE COURT: Please.

20 MR. MANGO: And absent an objection, which  
21 I understand there is, but I would move this into  
22 evidence, your Honor.

23 MR. LINSIN: I would renew my objection,  
24 your Honor.

25 THE COURT: Okay. Mr. Personius.

1 MR. PERSONIUS: Yes, Judge, I renew the  
2 objection. I note the date and even the content --  
3 I'm just not -- I just think for a variety of  
4 reasons it's objectionable.

5 THE COURT: Okay. And we did have some  
6 discussion on this. I think the reasons were amply  
7 stated against admissibility. I think for purposes  
8 of this document being included in the particular  
9 file that was seized, the government's position is  
10 supportive of that. I will, over objection,  
11 receive this particular document as one of the  
12 documents contained in the file.

13 (Government Exhibit 118.01 was received  
14 into evidence.)

15 MR. MANGO: Thank you, your Honor. I  
16 would ask that it be published.

17 THE COURT: And it's over objection. Yes.

18 BY MR. MANGO:

19 Q. Mr. O'Connor, do you see the document now on  
20 your screen?

21 A. Yes, I do.

22 Q. Let's just focus on this section here.

23 Are you familiar with what the Tonawanda News  
24 is?

25 A. I am.

1 Q. What is it?

2 A. It's a newspaper.

3 Q. Okay. Is there a date on this?

4 A. There is a date on this document.

5 Q. Okay. And what does this -- what does this  
6 document -- is there a title for this document?

7 A. Well, there's an -- it's a computer-generated  
8 story or -- well, it appears to be taken from the  
9 Internet.

10 Q. Okay.

11 A. And the title of the page is Tonawanda News and  
12 then there is a title of the story below that.

13 Q. Okay. And if we can zoom out of this, please.  
14 And if we could just --

15 THE COURT: Well, the date is March 2nd,  
16 2005, right?

17 MR. MANGO: Yes, your Honor.

18 If we could just focus on these two paragraphs  
19 at the bottom.

20 MR. LINSIN: Your Honor, if we may, could  
21 we go back to the top just so the record is clear?

22 THE COURT: Yes.

23 MR. LINSIN: If we'd enlarge the area  
24 below the headline, I believe the date of  
25 publication appears to be February 25th, 2005.

1 MR. MANGO: That would appear to be  
2 correct, your Honor.

3 THE COURT: Okay. And the March 2, 2005,  
4 date relates to site updates, at least by whatever  
5 terminology that establishes --

6 MR. LINSIN: Yeah.

7 THE COURT: Okay. The record will so  
8 reflect.

9 MR. MANGO: If we could focus on the last  
10 two paragraphs.

11 Take a look at that. Do you see the name  
12 Tonawanda Coke anywhere in these two paragraphs?

13 THE WITNESS: Yeah, I do.

14 MR. MANGO: Okay. All right.

15 THE COURT: All right. And that  
16 information, ladies and gentlemen, is not offered  
17 to establish anything other than the article states  
18 this information in it and the article was  
19 contained in the file. And as such, it could  
20 comprise notice of at least what the article's  
21 contents are in this particular piece from the  
22 Tonawanda Press.

23 Okay. You may proceed.

24 MR. MANGO: Thank you, your Honor.

25 BY MR. MANGO:

1 Q. I'd like to --

2 We can take that down now, Lauren, thank you.

3 Mr. O'Connor, do you know if -- we went through  
4 records now that were seized from Defendant  
5 Kamholz's office, is that right?

6 A. Yes.

7 Q. Okay. Do you know if other records were seized  
8 during the course of the search warrant from other  
9 locations at the Tonawanda Coke Corporation?

10 A. Yes. I do know that there were records taken  
11 from other locations that day.

12 Q. Okay. At this point, your Honor, I would ask  
13 to pull up Government Exhibit 120 for  
14 identification purposes.

15 Mr. O'Connor, do you see that document on your  
16 screen?

17 A. I do.

18 Q. And are you familiar with this document?

19 A. I am.

20 Q. Okay. Where did this document come from?

21 A. It came from an office in the administration  
22 building at Tonawanda Coke Corporation.

23 Q. Okay.

24 A. That office was on the second floor.

25 Q. Okay. And have you reviewed this document?

1 A. Yes, I have.

2 MR. MANGO: Your Honor, for reasons we  
3 discussed earlier -- and I can go into more detail  
4 if necessary -- the government would move  
5 Government Exhibit 120 into evidence.

6 THE COURT: Same objection, Mr. Linsin?

7 MR. LINSIN: Same objections, relevance  
8 and 403.

9 THE COURT: Are those two objections or  
10 one?

11 MR. LINSIN: Actually, it's two. They  
12 would stand alone -- either would stand alone. We  
13 believe it to be irrelevant and even if that was  
14 determined against us, we believe it to be  
15 inadmissible under 403, as well.

16 THE COURT: Okay. Thank you.  
17 Mr. Personius.

18 MR. PERSONIUS: I'll join in the  
19 objection, Judge.

20 THE COURT: Okay. All right. I think in  
21 keeping with my understanding as the arguments were  
22 expressed, I will overrule those objections, and  
23 permit you to proceed and receive 120. And again,  
24 it will be subject to cross-examination, if you  
25 will, if I can express it that way, although we're

1 talking about an exhibit as such, but, in any  
2 event, 120 received.

3 (Government Exhibit 120 was received into  
4 evidence.)

5 THE COURT: Over objection.

6 MR. MANGO: Thank you, your Honor.

7 BY MR. MANGO:

8 Q. Mr. O'Connor --

9 I'd ask that it be published for the jury.

10 Mr. O'Connor, do you see what is on your screen  
11 now?

12 A. Yes, I do.

13 Q. What is this document?

14 A. That's a copy of the cover of a binder.

15 Q. Okay. And the binder was seized during -- or  
16 where did the binder come from?

17 A. The binder came from an office in the  
18 administrate building at Tonawanda Coke on the  
19 second floor.

20 Q. During the execution of your search warrant?

21 A. Yes.

22 Q. Okay. And this is a -- mentions a business  
23 plan. Is there a fiscal year period that is given?

24 A. Yes, there is. It says it's the business plan  
25 for the fiscal year ended June 30th, 2009.



1 Q. Okay. Now, have you reviewed this document?

2 A. Yes, I have.

3 Q. All right. Are there any references in this  
4 document to environmental compliance?

5 A. Yes, there are.

6 Q. Okay.

7 I'd like to move, your Honor, to page 16 of  
8 this exhibit.

9 Do you see -- what is the title at the top of  
10 page 16?

11 A. The top of the page says "Market Analysis."

12 Q. Okay. And I'd like to focus on the bottom part  
13 here.

14 What is the -- the heading for this bottom  
15 part?

16 A. The heading of this section, the bottom part  
17 says "weaknesses."

18 Q. If you could read for the jury that last two  
19 lines.

20 A. The last two lines read, "Significant  
21 environmental pressures include ongoing compliance  
22 with local, state, and federal emissions  
23 regulations."

24 Q. Okay. Do you know, Mr. O'Connor, if there was  
25 any other reference to environmental risks in this

1 document?

2 A. Yes. I do know that there were references to  
3 environmental risks in this document.

4 Q. Okay. I'd like to go to page 18 of this  
5 document. And do you see -- if we could just focus  
6 on that.

7 What's the heading for this section that we've  
8 now enlarged?

9 A. The heading that shows up on this section is  
10 "Risks."

11 Q. Okay. And do you see a subheading here titled  
12 "Environmental Risks"?

13 A. Yes, I do.

14 Q. Okay. If you could please read sub 1 and sub 3  
15 for the jury.

16 A. Sub 1 reads: "Regulatory. The laws that may  
17 impact our product are primarily environmental.  
18 Tonawanda Coke Corporation will stay abreast of  
19 legal issues facing our industry through trade  
20 associations."

21 Q. And number 3, please?

22 A. Number 3 reads: "Economic. Compliance with  
23 environmental mandates often involves substantial  
24 capital expenditures."

25 Q. Mr. O'Connor, do you know -- during your review

1 of records seized during the search warrant, did  
2 you come upon any other business plans for the  
3 Tonawanda Coke Corporation?

4 A. Yes, I did.

5 Q. Okay. What -- did those have years associated  
6 with them?

7 A. Yes, they did.

8 Q. And what were those years?

9 A. They were for years ending 2005, 2007,  
10 and 2008.

11 Q. In addition to this 2009 one we just read?

12 A. In addition to this 2009 business plan.

13 Q. That language that I just had you read that was  
14 on page 16 and on page 18, was there language --

15 MR. LINSIN: Objection. Objection. He's  
16 asking a witness to testify about documents that  
17 are not even in evidence.

18 THE COURT: True. Sustained.

19 MR. MANGO: Your Honor, at this point I'd  
20 like to pull up -- let me --

21 We can take this down. Thank you, Lauren.

22 Mr. O'Connor, we went through some of these  
23 circular bleeder charts, is that right?

24 THE WITNESS: Yes, that's correct. We  
25 did.

1 BY MR. MANGO:

2 Q. Okay. Now, during your review of the materials  
3 seized during the execution of the search warrant,  
4 do you know if any additional -- other than what we  
5 looked at, any additional bleeder charts were  
6 seized?

7 A. Yes. I do know that additional bleeder charts  
8 were seized.

9 Q. Okay.

10 MR. MANGO: Your Honor, at this point I'd  
11 like to pull up Government Exhibit 400, no decimal  
12 point.

13 THE COURT: You saw the light, Mr. Mango.

14 MR. MANGO: For identification. I did.  
15 Took a little while. We got to 400. But I did.  
16 This is for identification purposes.

17 Mr. O'Connor, do you see this document that is  
18 on your screen?

19 THE WITNESS: Yes, I do.

20 BY MR. MANGO:

21 Q. And what do you recognize this document as?

22 A. I recognize it as a circular bleeder chart.

23 Q. Okay. Where did this come from?

24 A. This bleeder chart came from Pat Cahill's  
25 office at Tonawanda Coke Corporation during the

1 execution of the search warrant.

2 Q. Okay.

3 MR. LINSIN: Your Honor, could we just  
4 have some basis for that testimony? I don't quite  
5 understand --

6 THE COURT: Let's do it now.

7 MR. MANGO: Yes, your Honor.

8 THE COURT: Please.

9 BY MR. MANGO:

10 Q. Mr. O'Connor, did you review, as part of your  
11 review at the U.S. Attorney's office where certain  
12 records came from that were seized during the  
13 search warrant?

14 A. Yes, I did.

15 Q. Okay. And is that how you're able to -- how  
16 are you able to say that this came from  
17 Mr. Cahill's office?

18 A. Through my review and, in this case, I happened  
19 to be the one that seized this set of charts.

20 Q. Okay.

21 MR. MANGO: All right. Your Honor, the  
22 government would move Government Exhibit 400 into  
23 evidence which is a bleeder chart for December 9th  
24 of 2009. And there's a number of them, your Honor.  
25 And if there is no objection, I would move

1 consistently from Government Exhibit 400 all the  
2 way up to Government Exhibit 569 into evidence.

3 MR. LINSIN: All of the same foundation we  
4 just heard, all seized from Mr. Cahill's office by  
5 this witness?

6 THE COURT: Mr. O'Connor, is that true?

7 THE WITNESS: Yes, that's true.

8 THE COURT: Okay.

9 MR. LINSIN: No objection, your Honor.

10 THE COURT: All right. Mr. Personius?

11 MR. PERSONIUS: Could we have a time frame  
12 again, please, Judge?

13 MR. MANGO: Yes. The first chart, your  
14 Honor, is dated December 9th, 2009, that's  
15 Government Exhibit 400. And the last chart is  
16 dated May 15th of 2009, and that's Government  
17 Exhibit 569. And they range in between that time  
18 period.

19 MR. PERSONIUS: No objection, Judge.

20 THE COURT: Okay.

21 MR. PERSONIUS: Thank you.

22 THE COURT: All right. Exhibit --  
23 Government Exhibit 400 through Government  
24 Exhibit 569, all bleeder chart documents, received  
25 into evidence without objection.

1 Do you wish to publish any?

2 (Government Exhibits 400 through 569 were  
3 received into evidence.)

4 THE COURT: You have 400 on the screen  
5 right now.

6 MR. MANGO: Not at this point. I'd just  
7 ask to publish Government Exhibit 400 as a  
8 representative example.

9 BY MR. MANGO:

10 Q. Mr. O'Connor, do you see that on your screen?

11 A. Yes, I do.

12 Q. For the jury's benefit, if we just can blow up  
13 this central portion.

14 What is the date listed there?

15 A. The date is 12/9/09.

16 Q. Okay. Thank you. Okay.

17 THE COURT: Actually, that's the latest  
18 dated circular chart document, right, the bleeder  
19 chart document?

20 MR. MANGO: Yes, your Honor.

21 THE COURT: Okay.

22 MR. MANGO: May have not fully learned all  
23 the lessons yet but, yes. It does go backwards in  
24 time.

25 THE COURT: Okay. Okay. I won't say

1 anything more, Mr. Mango.

2 MR. MANGO: I have one more set, your  
3 Honor. If we could pull up Government Exhibit  
4 21.01 for identification purposes.

5 And, Mr. O'Connor, ask you to take a look at  
6 that. Do you see that on your screen?

7 THE WITNESS: Yes, I do.

8 BY MR. MANGO:

9 Q. Okay. What is this document you see on your  
10 screen?

11 A. It's a circular bleeder chart.

12 Q. Where did this bleeder chart come from?

13 A. I'm not sure if this particular one was part of  
14 that set or not, but it came from the search  
15 warrant.

16 Q. Okay. You're familiar that this came from the  
17 search warrant?

18 A. Yes.

19 Q. All right.

20 MR. MANGO: Your Honor, the government  
21 would offer Government Exhibit 21.01 into evidence.

22 THE COURT: You want to expound on that a  
23 little bit I think, right?

24 MR. LINSIN: It would be helpful.

25 THE COURT: Give us in terms of more



1 information relative to your role in the seizure of  
2 this particular exhibit.

3 THE WITNESS: Well, my role was that I was  
4 present there, but that I reviewed these documents  
5 back at the U.S. Attorney's office at a subsequent  
6 time to the search warrant.

7 THE COURT: Okay. And the date of the  
8 seizure?

9 THE WITNESS: The date of the seizure was  
10 December 17, 2009, your Honor.

11 MR. LINSIN: Your Honor, is there any  
12 marking on this document that -- that helps the  
13 witness understand that it was, in fact, one of the  
14 these myriad of charts seized or from where it was  
15 seized? Folder or not. Anything.

16 THE COURT: Is there like that,  
17 Mr. O'Connor?

18 Why don't you take the center disc and blow  
19 that up for a minute. All right.

20 Anything there or anywhere on that particular  
21 copy of the exhibit that identifies it to a  
22 particular location on a particular date or  
23 whatever?

24 THE WITNESS: What I can say is that it's  
25 a bleeder chart and I know that it was seized at

1 the warrant -- during the warrant, but this  
2 particular one, I'm not sure what location it was  
3 taken from.

4 THE COURT: Okay. But it looks like  
5 1/1/09. Is that the right date?

6 THE WITNESS: That's the date on the  
7 chart. That's not the date of the seizure.

8 THE COURT: Okay. So, your testimony is  
9 that you know this to have been seized pursuant to  
10 the search warrant from an earlier review of this  
11 particular exhibit at the U.S. Attorney's office?

12 THE WITNESS: Yes, your Honor.

13 THE COURT: It goes to weight, I think.

14 MR. LINSIN: No objection, your Honor.

15 THE COURT: All right. Mr. Personius?

16 MR. PERSONIUS: No objection, Judge.

17 MR. MANGO: Yes, your Honor. Thank you.

18 I would move this into evidence and ask at least  
19 this one be published for the jury.

20 THE COURT: Okay.

21 (Government Exhibit 21.01 was received  
22 into evidence.)

23 MR. MANGO: And there is another series of  
24 exhibits, your Honor, and I believe the same  
25 foundational questions would apply to the

1 Exhibit 21 series which are Government  
2 Exhibit 21.02 up to 21.72, which start in January  
3 of 2009 and range to March 15th of 2009. And I  
4 would move all of those documents into evidence,  
5 your Honor.

6 THE COURT: You had 21.61 already  
7 received, though. So --

8 Right?

9 MR. MANGO: Yes, your Honor. Yes. You're  
10 right. So absent 21.61, I would move the package  
11 of 21.02 to 21.72 into evidence.

12 MR. LINSIN: Your Honor, 21 -- the date of  
13 21.02, please? I just -- I heard January of '09.  
14 I don't know what date it is.

15 MR. MANGO: It starts at January 2nd of  
16 2009.

17 MR. LINSIN: Okay. All right.

18 No objection, your Honor.

19 MR. PERSONIUS: No objection, your Honor.

20 THE COURT: Okay. 21.02 excluding 21.61  
21 through and inclusive 21.72, received, no  
22 objection. Subject to the same foundational  
23 questions and answers, and you may selectively --  
24 well, you've already displayed 21.01. So I don't  
25 know if you want -- and that's on the screen right

1 now. It's been published. Is there anything else  
2 you want to do?

3 MR. MANGO: Not with this series of  
4 exhibits, your Honor.

5 (Government's Exhibit 21.02 through 21.60  
6 and 21.62 through 21.72 were received into  
7 evidence.)

8 THE COURT: Okay.

9 MR. MANGO: Thank you. If I can have a  
10 moment.

11 THE COURT: Sure.

12 MR. MANGO: Your Honor, the government has  
13 no further questions for Mr. O'Connor at this  
14 point.

15 THE COURT: Okay. We probably should  
16 break at this point.

17 Mr. O'Connor, we'll call you back, though,  
18 after the jury comes back from lunch. We'll --  
19 please, ladies and gentlemen, don't discuss the  
20 case. Keep your minds open. Keep in mind that the  
21 government has to prove its case beyond a  
22 reasonable doubt. The best advice I can give you  
23 is enjoy that lunch today. All right. And we  
24 we'll see you back here at what time?  
25 2:00 o'clock. Thank you very much.

1 (Jury excused from the courtroom.)

2 THE COURT: Okay. You can step down you,  
3 Mr. O'Connor. Thank you.

4 All right. We'll see everybody at 2:00.

5 MR. LINSIN: Thank you, your Honor.

6 MR. MANGO: Thank you, Judge.

7 (Lunch recess was taken.)

8 (Jury not present in the courtroom.)

9 THE COURT: Okay. We're back on in  
10 Tonawanda Coke and Mark Kamholz, defendants.

11 Is there an issue that we need to work out?

12 MR. LINSIN: We thought it might be  
13 helpful to address the Court on this issue that we  
14 had spoken about briefly this morning before  
15 testimony began, and that is these two summary  
16 charts that the government has prepared.

17 THE COURT: Yes.

18 MR. LINSIN: We have had a chance to  
19 review them, and I just wanted to give -- I don't  
20 know if it'll literally come up this afternoon, but  
21 I wanted to at least give the Court a sense of what  
22 we're looking at here.

23 There are two summary charts. One of them is  
24 an abstract of entries that are contained in the  
25 by-products operators' log which is in evidence.

1 We've spoken to counsel for the government. Our  
2 sense is that there are some errors in the chart as  
3 developed. Some of the entries, we believe, are  
4 incomplete and should be augmented so that they are  
5 complete. I don't see a problem working our way  
6 through to an accurate summary abstract of the  
7 entries in the BP log that reflect adjustments in  
8 the set point for the -- for the pressure relief  
9 valve. So I think we can get to where the  
10 government wants to get with regard to that first  
11 summary chart.

12 We have very profound concerns, however, about  
13 the second summary chart which purports to be a  
14 calculation based upon the entries in the operator  
15 logbook and a comparison of the circular charts for  
16 the intervening periods of time. And the spikes  
17 reflected in those circular charts that go above a  
18 given set point purports to be a calculation of the  
19 number of releases throughout that time period.

20 THE COURT: Not tonnage but the number?

21 MR. LINSIN: The number of releases.

22 THE COURT: Okay.

23 MR. LINSIN: But here's the concern, your  
24 Honor, and why we believe that the way this is done  
25 and what it purports to represent is -- is a

1 significant distortion of the evidence in this case  
2 already. As the Court may recall, Pat Cahill, who  
3 was the BP operator, testified that he would make  
4 changes in the set point for this pressure relief  
5 valve and not record it. As the BP foreman, not  
6 record it.

7 THE COURT: He said he never recorded  
8 anything.

9 MR. LINSIN: Exactly. And one of the  
10 premises of this summary chart is that -- that the  
11 set point remains the same from one entry to the  
12 next. So all the calculations are based on that  
13 presumption. There may be three months intervening  
14 between the entries, and the calculations are  
15 assuming that the number is the same. So there's  
16 Cahill's testimony that he never recorded anything  
17 in the BP log.

18 If you look at the logbook itself, your Honor,  
19 there are entries in here that were recorded by the  
20 operators that demonstrate on their face that not  
21 all the entries are recorded. And, for example,  
22 there is an entry in August 29th of 2007 which  
23 indicates the set point was 80. The very next  
24 entry which is October 7th, a little over a month  
25 later, it states that the set point was lowered to

1       90. And so it's obvious that there had been one  
2 more changes in between this intervening time. And  
3 again, the government's calculations in its chart  
4 presume that the set point has remained identical.

5           There is another point, your Honor, that I  
6 will -- because what it compares the circular  
7 charts to is the set point in the last entry in the  
8 operators' log.

9           THE COURT: But I think Cahill always said  
10 he raised the point, didn't he? I'm not sure he  
11 ever said he lowered it. I don't remember that. I  
12 don't know if that makes a difference for purposes  
13 of where you're going.

14           MR. LINSIN: There's testimony from  
15 Mr. Cahill, as I recall, that certainly during --  
16 there was testimony about raising and lowering  
17 during the April '09 inspection. All right.  
18 That's one issue. But he also testified, as we  
19 recall, that he changed and adjusted this set point  
20 at other times. And never -- as the foreman, never  
21 recorded it in there.

22           There is another entry here, your Honor, by Pat  
23 Cahill admonishing the operators not to change the  
24 set point without his express direction. Again,  
25 the logbook itself reflecting that there is a



1 problem that the set point is getting changed  
2 without being recorded.

3 And perhaps -- well, additionally important,  
4 your Honor, even though it hasn't been the subject  
5 of active testimony, the government had on its  
6 witness list a former BP operator, James Bodie. I  
7 forget his first name. James Bodie. He has  
8 testified -- he has stated to the government in a  
9 number of interviews, the government is aware of  
10 this, that even as a BP operator, it was his  
11 practice to change this set point without recording  
12 it in this logbook. And so what we're dealing  
13 with -- and the record here demonstrates that the  
14 logbook says what it says and we're prepared to  
15 agree to, you know, a summary chart reflecting  
16 that. But then extrapolating from that those  
17 statements into a statement that -- into a summary  
18 chart that purports to reduce this to a calculation  
19 of exact number of releases in a given time period,  
20 I think distorts the evidence that has already been  
21 introduced in the case, and provides a very, very  
22 misleading picture of this issue. The jury is free  
23 to make its own comparisons. They will have these  
24 circular charts and all the testimony. But we  
25 believe this is a distortion and not faithful to

1 the evidence that it purports to summarize. So we  
2 have a very significant concern about this summary  
3 chart for those reasons.

4 THE COURT: But the summary chart, as far  
5 as it goes in terms of what it reflects from the  
6 records, it's accurate as to the set points. The  
7 only difference that -- not difference, but the  
8 point of contention here is that you feel that the  
9 set points that are reflected are not wholly  
10 accurate because there may well be additional ones  
11 that are not recorded?

12 MR. LINSIN: That's right. And the  
13 summary chart -- if this was a summary chart, your  
14 Honor, of -- regarding activities on the day of the  
15 entry in -- in the BP logbook, there might be a  
16 quibble about it, but it's not that significant.  
17 There could be a gap of 30 or 45 or 60 days. This  
18 summary chart is presuming that the set point has  
19 remained the same for that entire period, and that  
20 conflicts with the evidence.

21 THE COURT: Well, isn't that for you to  
22 point out?

23 MR. LINSIN: Your Honor, I think a summary  
24 chart should only be admissible if it fairly  
25 reflects what the evidence is, as a threshold

1 matter. I don't think this goes to weight. I  
2 believe that this presumes a normalcy and a  
3 predictability in what that set point was. And I  
4 don't think we should be put in the position of  
5 having to -- of permitting the government to  
6 introduce a demonstrably unreliable summary and  
7 then having to point out that unreliability. I  
8 think -- under 1006, I do not believe that summary  
9 charts should be admitted if it is obvious on the  
10 record that is not faithful to the underlying  
11 evidence.

12 THE COURT: Okay. All right. I certainly  
13 understand the argument.

14 Mr. Mango.

15 MR. MANGO: Yes, your Honor.

16 THE COURT: I mean, I think that's right.  
17 When you're talking about a summary chart, it has  
18 to be based on the evidence. And you have both  
19 documentary and testimonial evidence here. So how  
20 is that summary chart faithful to the evidence  
21 presented?

22 MR. MANGO: Yes, your Honor. The -- the  
23 set of summary charts -- they're really a set of  
24 summary charts, the green ones versus the orange  
25 one, the first one Mr. Linsin was referring to.

1 THE COURT: All right. The orange one  
2 we're not concerned with, right? You can work that  
3 out?

4 MR. MANGO: Right, but they do relate,  
5 your Honor, because this is a document that is used  
6 then into the green summary charts which is a  
7 summary for the time period that we have circular  
8 charts. We don't have circular charts before '09.  
9 So this reference in 2007 that bleeder now at 80,  
10 and then two months later, a month and a half later  
11 lowered bleeder to 94, that's two years before the  
12 time period being referenced in here.

13 My recollection of the testimony is Pat Cahill  
14 would note in the log when he made changes but not  
15 during the April inspection. That's when he said,  
16 because he didn't want anybody to find out that --  
17 what he was doing.

18 THE COURT: I don't recall, but --

19 MR. MANGO: And --

20 THE COURT: Let's assume for the moment he  
21 didn't say that. Then what? What if he said --  
22 which is my recollection, and I'll -- I'll pull it  
23 up. If he said that he never recorded any of his  
24 changes, which is what I think he said, then what?  
25 Then you're not accurately reflecting the state of

1 the record in the summary.

2 MR. MANGO: I think, your Honor, when  
3 there is a specific entry in a logbook which says  
4 bleeder now at 90 -- or lowered bleeder to 94, say,  
5 on March 2nd of 2009, and then the next day, raised  
6 bleeder to 100. And then two and a half months  
7 later, bleeder back in service, 110. That is  
8 consistent with the evidence. Because what we --  
9 what we heard was that the bleeder setting was  
10 typically between 80 and 100. And so for these  
11 periods -- we're talking about just a very small  
12 period of time here on this orange chart that  
13 relates to the green charts. And it's -- there has  
14 been testimony from Mr. Hutchinson, Mr. Cratsley, I  
15 believe Mr. Brossack, that the bleeder rarely got  
16 changed. It would rarely get changed.

17 THE COURT: But you have testimony that it  
18 was changed.

19 MR. MANGO: Yes, yes. So there could be  
20 periods of months --

21 THE COURT: What do you do with the one  
22 example Mr. Linsin gave you where I think the  
23 testimony was or the chart reflects a lowering to a  
24 point that was above a certain number?

25 MR. LINSIN: Higher than the last recorded

1 set point.

2 THE COURT: Yeah. How do you reconcile  
3 that?

4 MR. MANGO: That is two years before  
5 anything that begins to be recorded on these  
6 charts, your Honor. Clearly, it's -- clearly, it's  
7 a discrepancy and that is a subject that could --  
8 could be cross-examined of the witness on. But the  
9 evidence is what it is.

10 THE COURT: Well, not if you don't account  
11 for the testimony. I mean, if you're wrong about  
12 what Cahill said, then your chart is not an  
13 accurate summary.

14 MR. MANGO: Well, then what we could do,  
15 your Honor, is -- is the only time periods in play  
16 from this orange chart, the bleeder is set from  
17 90 -- between the period of September of '08 and  
18 March of '09 from 90 to 94. So in that -- all of  
19 January, February, and the first day of March, for  
20 the purposes of this chart, we've assumed that the  
21 bleeder was set at 90. Then we've got 94, 100, and  
22 110. For purposes of -- if the Court is really  
23 concerned and wants to be consistent with the  
24 testimony, the testimony --

25 THE COURT: Well, you should be too,

1 right?

2 MR. MANGO: Yes. But I also wanted to  
3 stay true to the by-products logbook which, again,  
4 there is no real discrepancy in this small little  
5 time frame. The settings in this green summary  
6 chart could just be reflected to 100 as an estimate  
7 because that was what the general setting was, 80  
8 to 100. So we'll presume it's set at the highest  
9 setting in the typical set point unless the  
10 by-products logbook conflicts with that, and then  
11 we'll use the by-products logbook.

12 There's got to be some way, your Honor, to  
13 capture this information. Otherwise, all of these  
14 circular charts that are now in evidences will have  
15 no meaning to the jury and there does need to be  
16 some type of meaning. And I think it's a reliable  
17 meaning to go based on the testimony here, and then  
18 the logbooks of what they indicate the bleeder was  
19 set at. Which -- and give the benefit of the doubt  
20 of if it's lower than 100, we'll recalculate and  
21 put it at 100.

22 MR. LINSIN: Your Honor, I'm troubled even  
23 by counsel's comments that we're now going to start  
24 making estimates and then performing precise  
25 arithmetic calculations based on estimates. The

1 testimony is and has consistently been from a  
2 number of witnesses, and the by-products logbook  
3 itself reflects that these numbers are not entirely  
4 reliable. And that there was a practice of the  
5 operator -- of the foreman himself and of some of  
6 the operators to change this set point at times and  
7 ways that you are not reflected in the logbook.  
8 And the truth is the jury has heard that evidence,  
9 they can assess that evidence, and I'm not at all  
10 surprised that the government would like to be able  
11 to reduce this to some formula and come up with a  
12 graph that has the indicia of reliability and  
13 predictability, but that very process I believe  
14 defies the evidence that has actually been  
15 introduced. And it is that -- and the suggestion  
16 that we just come up with some compromise number  
17 even worsens the problem.

18 MR. PERSONIUS: Judge, if it's helpful,  
19 from Mr. Kamholz's notes on March 6th, 2013, at the  
20 conclusion of my cross, because I remembered asking  
21 Mr. Cahill this and, your Honor, it would be right  
22 around -- we broke at 11:05, we came back at 11:35.  
23 So it would be around 11:35 on March the 6th at the  
24 conclusion of my cross, right before Mr. Linsin's  
25 cross, I asked Mr. Cahill, "Are you telling us that



1       you didn't record your changes?"

2               THE COURT: Did not?

3               MR. PERSONIUS: "Did not." Because it was  
4 news to me, and he said, "That's correct. I did  
5 not." Because I remember I was surprised by it.  
6 We had a break. I thought about it. I said, you  
7 know, I'm going to ask him to confirm that.

8               THE COURT: That's my recollection. I  
9 mean, I think it was sort of cause for me, too, to  
10 pause at the time he said that. I don't recall  
11 what you recall, Mr. Mango. And, you know, at  
12 first I thought maybe this is a matter of weight.  
13 But I think it is right that if your chart, based  
14 on the available evidence that was presented either  
15 by direct or cross, does not purport to be an  
16 accurate summary of that evidence, it's  
17 problematic. It's problematic.

18              MR. MANGO: I do remember asking  
19 questions, your Honor -- and again, sorry I don't  
20 have the exact witness and citation -- of is the --  
21 is the by-products logbook generally accurate to  
22 what the bleeder is set at. I believe that has  
23 come up.

24              THE COURT: Well, I don't know if anybody  
25 disagrees with that. That may well have been the

1 testimony, but that doesn't account -- I don't  
2 think, and this is the point -- for the testimony  
3 with respect to those adjustments in the set point  
4 that took place and weren't recorded. That's what  
5 we're talking about.

6 MR. LINSIN: That is true, your Honor.  
7 And I must go back to this point. I'm troubled by  
8 the recognition -- the government's recognition  
9 that they have in their files interview reports  
10 from James Bodie, a by-products operator, who has  
11 told them, "yeah, I changed this set point and I  
12 didn't record it." Now, they scratched him off  
13 their witness list. I can't tell you why, but they  
14 know what these facts represent. And it is a  
15 distortion of -- of reality here to suggest that  
16 somehow because some entries got in this logbook,  
17 then we can presume that they remained the same  
18 from one date to the next. And it is -- it is  
19 unfair, and I think -- well, I believe the premise  
20 of this summary chart is fatally flawed.

21 MR. MANGO: Your Honor, he was not  
22 scratched for any particular reason such as that.  
23 He was scratched because the evidence would have  
24 been cumulative. I could check my notes. And it's  
25 my recollection when I recently interviewed

1 Mr. Bodie that he was not prepared to say what --  
2 what counsel is suggesting. Likewise, that's not  
3 evidence in the case anyway, so that's really --

4 THE COURT: No, it's not. But your  
5 concern is to -- from the standpoint of those  
6 circular bleeder chart documents, to give them some  
7 meaning --

8 MR. MANGO: Right.

9 THE COURT: -- through the summary charts,  
10 right?

11 MR. MANGO: Yes.

12 THE COURT: If you didn't have the chart,  
13 what do you do with them?

14 MR. MANGO: The summary chart? What do I  
15 do with the circular charts now in evidence?

16 THE COURT: Um-hum.

17 MR. MANGO: I make reference in closing to  
18 them. I'm at a loss. I have no use for them at  
19 that point, other than to -- to argue hypotheticals  
20 when the by-products logbook itself records  
21 exactly --

22 MR. PERSONIUS: It doesn't.

23 THE COURT: But it doesn't take into  
24 account those settings that were made that weren't  
25 recorded. And there could have been numerous

1 settings not only by Cahill but by others, as I  
2 recall the testimony.

3 MR. PERSONIUS: Judge, there is another  
4 piece to this, too. There was -- if you recall  
5 from the evidence, there was a response put in by  
6 Mr. Kamholz to this 114 letter from the EPA in  
7 October of 2009. And the government's made much of  
8 the fact that Mr. Kamholz said in that response  
9 that the PRV releases were rare or infrequent.

10 And the point I made was that's as of that  
11 time, because then we had the testimony from  
12 Mr. Sitzman that the -- there had been a  
13 recommendation that the pressure be raised up, and  
14 Mr. Sitzman confirmed that his information was that  
15 there had not been any releases at that time.

16 With the government's chart, what they're  
17 trying to show is there were all these releases  
18 through that period of time based upon the logbook,  
19 which is not reliable. So it's not just a question  
20 of using the circular charts. The government wants  
21 to try to use this, I believe, to demonstrate, and  
22 I think improperly, that when Mr. Kamholz provided  
23 his response in October of 2009, he wasn't being  
24 truthful, and that's contrary to the evidence. The  
25 evidence supports the fact he was being truthful.

1       So there is that further enormous prejudice that  
2       would arise from allowing the government to use  
3       this chart, which is not based on the evidence.

4               MR. MANGO: Your Honor, I've got to  
5       disagree with that comment. The by-products  
6       logbook, the last entry of -- for what is in  
7       evidence, is on May 22nd where it says "bleeder  
8       setting 110." And previously, a month and a half  
9       before it was 100. That's consistent with  
10      Mr. Sitzman's recollection that somehow he learned  
11      somebody turned the bleeder up. But, it was never  
12      turned up so that this thing wouldn't release.  
13      There's been no evidence of that. There hasn't.

14             MR. PERSONIUS: Oh, but there has --

15             THE COURT: Well, that's the purpose of  
16      turning it up, right? So that there wouldn't be a  
17      release.

18             MR. MANGO: But there's no evidence of  
19      that. Nobody's said, "I turned it up so it  
20      wouldn't release based on what the DEC asked me to  
21      do." Nobody said that.

22             MR. LINSIN: Your Honor, that -- that is  
23      just -- the evidence from every regulatory witness  
24      that was at the closeout meeting of the April '09  
25      inspection confirmed that the plant personnel,

1 Mr. Kamholz, told them that they would look into  
2 adjusting this set point so that it would reduce or  
3 eliminate the releases. And then Mr. Sitzman  
4 testified that after that inspection, he satisfied  
5 himself that that had been done. That is the  
6 evidence. That's what the government's witnesses  
7 testified to.

8 MR. MANGO: And then a month later, we  
9 have -- during that April inspection, your Honor,  
10 the government regulator noted the pressure setting  
11 was -- release point was 130. Right? And a month  
12 now later after that inspection, we have a notation  
13 in the BP log that it's 110? It's because the  
14 corporation was not willing to turn this up.  
15 They -- they were just giving the regulators what  
16 they wanted to hear.

17 And the evidence shows from the by-products  
18 logbook that it was -- it can't be corroborated,  
19 the information that they claim that this was  
20 raised so it wouldn't release. Nobody has said  
21 that we ever put it up to 160, 180. You'll look on  
22 these charts. That's where it would have had to  
23 have been for there to be no releases from this  
24 bleeder. And that's just not in evidence.

25 MR. PERSONIUS: It is in evidence through

1 Mr. Sitzman, Judge. It is. And he -- he's the  
2 government's witness, and he said that he  
3 determined it had not released. The government had  
4 every opportunity during redirect or re-redirect,  
5 wherever we were at that point, to clear that up,  
6 and they left the record the way it was. They left  
7 it alone. That's the record. They may not like  
8 it, but that's the record.

9 MR. MANGO: That's not the record, your  
10 Honor. We did clear it up. We asked him, "How do  
11 you know that?" He said, "I don't recall." So the  
12 weight of that evidence, in the government's view,  
13 is substantially diminished because he couldn't  
14 remember if he ever visited and observed this  
15 bleeder chart at the raised setting. He can't  
16 recall who he spoke to that said, after the fact,  
17 that it was raised. He never went to the plant and  
18 looked to see if it was releasing. So, the weight  
19 of that evidence is minimal, in the government's  
20 view, your Honor.

21 THE COURT: But it does exist, right? It  
22 does exist?

23 MR. MANGO: It does exist. But then you  
24 have to look one month later, after the April  
25 inspection. There's a notation in the logbook,

1 "bleeder at 110, looking good."

2 MR. LINSIN: Your Honor, if I may, and I  
3 apologize for interrupting. I believe that this  
4 very discussion illustrates the risks that this  
5 kind of summary chart poses here. The jury will be  
6 free to evaluate the testimony we have been  
7 referencing here. They will be free to pick these  
8 circular charts up -- I have no doubt they will --  
9 and see where those markings are and to compare  
10 them with the actual evidence that is in trial.  
11 And to suggest through admission of what should be  
12 a reliable summary document, to suggest that  
13 they -- they can shorthand that process and refer  
14 to this summary document that has been admitted, I  
15 think does a serious disservice to what this jury  
16 needs to go through to evaluate all this evidence.

17 THE COURT: When are we going to get to  
18 this testimony in this chart? Right now?

19 MR. MANGO: No, your Honor. I think this  
20 is likely going to happen on Monday going at the  
21 pace we have. After the cross of Mr. O'Connor,  
22 who's still on the stand, there's still two other  
23 witnesses that are still in play today. And I  
24 think that will take the rest of the day, in  
25 honesty. So it looks like our last witness,



1 Mr. Conway, would be on the stand on Monday.

2 THE COURT: Okay. Well, that -- that  
3 gives me some time I guess. All right. I think  
4 you've fully aired your arguments. I understand  
5 both positions. I don't know what the answer is  
6 yet. But --

7 MR. LINSIN: We will continue to work on  
8 this first summary chart.

9 THE COURT: Do you have an extra copy of  
10 each set? Let me just see if I can -- I'm not sure  
11 I fully comprehend the comparison you were trying  
12 to make. If you would please, Mr. Linsin. If you  
13 would give that to Mr. Moeller to your left. Thank  
14 you.

15 Okay. All right. Let's have the jury brought  
16 in at 2:45. Okay.

17 MR. MANGO: Yes, your Honor.

18 (Short recess was taken.)

19 (Jury not present in the courtroom.)

20 THE COURT: I just want to follow up on  
21 our -- I'm trying to look at the example you gave  
22 me of the lower bleeder to the 94 set point and  
23 that's from 2007. And I know we talked about that,  
24 right? And the chart is limited to 2009.

25 MR. MANGO: Yes, your Honor.

1 THE COURT: Right? And we don't have any  
2 recorded information that reflects the same kind of  
3 discrepancy, right?

4 MR. MANGO: That's correct, your Honor.

5 THE COURT: All right. So are there other  
6 sheets like this? Or is this the only one?

7 MR. MANGO: No, that's the only one. This  
8 is meant to be a chronology of all those different  
9 logbooks that went into evidence.

10 THE COURT: Okay. So we have testimony,  
11 as I remember it, of pattern and practice over the  
12 years, I think. In terms of the setting of the set  
13 points or the changing of the set point, whatever  
14 you want to call it, right? What's critical here,  
15 I think, is Cahill's testimony when he said that he  
16 did not record changes to the -- that were made in  
17 connection with the set point.

18 Was his testimony specific as to just the  
19 investigation period, or was it the expanded year  
20 of 2009, or was it with respect to the pattern and  
21 practice over the years? That's what I want to  
22 ferret out now just for discussion purposes.

23 Mr. Linsin.

24 MR. LINSIN: Your Honor, I did not review  
25 my notes of his testimony. My recollection of what

1 he meant when he testified -- and I will be happy  
2 to check our notes on this -- was that he was  
3 talking about his standard practice as the  
4 by-products foreman. That the by-products foreman,  
5 at least his practice as the by-products foreman,  
6 was not to record the changes. That this was  
7 something he instructed the operators to do and  
8 that it was sometimes done and sometimes not done.

9 THE COURT: Because I'm not so sure my  
10 recollection is on all fours with that. I think  
11 it's problematic, because if his recollection --  
12 not recollection, maybe -- maybe it's his -- at  
13 least if -- if it's my recollection and it's  
14 correct and he only talked about that very limited  
15 period of time where he didn't record the changes  
16 in the set point, that might not really impugn the  
17 integrity of what the government's trying to do by  
18 this chart.

19 MR. PERSONIUS: That's, Judge, where I'd  
20 ask you to consider checking the transcript at  
21 exactly where I suggest because I have a very  
22 distinct recollection of doing that. And not that  
23 you give it a lot of weight, but my client had that  
24 in his notes.

25 THE COURT: That's what I'm going to need

1       everybody to check out. Okay. Because my  
2       recollection, frankly, Mr. Personius, is I sort of  
3       remember that. I said that was pause for cause,  
4       but the more I think about this, it sort of sticks  
5       in my mind that his testimony when he -- we're  
6       talking about what he did, it was so rivetting as  
7       far as the investigation was concerned and  
8       that's -- that's why I think we need to check that  
9       through.

10               MR. PERSONIUS: And that's why I went back  
11       and asked him. Generally what I recall was, and  
12       your testimony was it was your practice, is what I  
13       recall. But that was to clear up exactly that  
14       because I was a bit surprised by it. But that's  
15       only recall.

16               MR. LINSIN: Your Honor, one other point  
17       and I -- I have our own digest of this logbook but  
18       I don't have it in front of me so I can't give a  
19       precise date, but it is my recollection that Pat  
20       Cahill also in the logbook in the time period that  
21       is of interest to us, in 2009, made an entry  
22       directing the other operators not to change the set  
23       point without his express direction. That, to me,  
24       your Honor -- it may not be as blatant as the  
25       example from 2007, but it evidences a concern on

1 the part of the foreman during our time period that  
2 this set point was getting changed without his  
3 knowledge and without it being recorded. And I  
4 understand it's not as clean but it is, I think,  
5 still a significant entry.

6 THE COURT: All right. It is -- you know,  
7 I don't disagree that it's a significant entry.  
8 But it may revert back to the weight to be given to  
9 the summary chart depending on how that plays out.  
10 I think we need to clarify what's troubling me; and  
11 that is, just what did Cahill testify to. I don't  
12 know if there's anybody else significantly that  
13 testified to that period in the -- aside from  
14 Sitzman. But -- to the changing of the set point.  
15 But I think we clearly have to know what Cahill  
16 said with respect to 2009. And big difference I  
17 think if it's limited to 2009 and if it's part of  
18 the pattern and practice. Okay.

19 MR. MANGO: And I think Mr. Cratsley did  
20 talk about changes in 2009. I'll check our notes,  
21 your Honor. We've got a couple people here taking  
22 notes that take it better than me. I'll check  
23 those, and the one notation in the logbook about  
24 not changing the bleeder, I believe that happened  
25 after the criminal search warrant. So -- which --

1       which is a time period that obviously has  
2       importance just because it's after the federal  
3       search warrant.

4               THE COURT:   Okay.   I don't clearly  
5       remember.   Someone remembered that statement of  
6       Mr. Cahill's, but I just don't know if it was post  
7       investigation, so --

8               MR. MANGO:   Yes.

9               THE COURT:   Or search warrant.

10              MR. MANGO:   Yes.   I have it here, your  
11       Honor.

12              MR. LINSIN:   Your Honor, Mr. Mango is  
13       correct, that particular entry we have as  
14       December 24th, 2009.

15              MR. MANGO:   That's correct.   And that --  
16       for the record, would note that is also the day  
17       after the criminal complaint was executed against  
18       Mr. Kamholz but another significant criminal step  
19       in the investigation.   So you've got the search  
20       warrant on the 17th, and the criminal complaint on  
21       the 23rd and then the next day there's the --

22              THE COURT:   The 24th?

23              MR. MANGO:   Yes.

24              THE COURT:   Okay.

25              MR. LINSIN:   Your Honor, last point on

1       this -- and we will obviously check our notes, but  
2       Ms. Grasso is also pointing out to me that there --  
3       if you look at this logbook beyond just these  
4       entries we've been discussing about the specific  
5       adjustments to the set point, there are entries in  
6       here that are reflective of this -- we believe,  
7       this pattern of adjusting -- adjustments in this  
8       set point other than what is recorded. And I'm  
9       offering as an example, a July 30th, 2009, entry in  
10      here shortly after the PRV was back in service,  
11      which says: "Note, we do not have radios at a  
12      phone. If Mr. Cahill makes an adjustment on  
13      anything, I believe it would be appropriate to  
14      inform the operators."

15             The clear implication here, as we read this  
16      entry, is there might be an adjustment made and  
17      Mr. Cahill's not writing it down but he needs to  
18      inform the operators. It does go, I think, your  
19      Honor, to trying to assess this overall rather than  
20      just looking at particular entries on a given day.

21             THE COURT: I mean, you can reasonably  
22      infer what you're arguing. On the other hand, you  
23      can reasonably infer what the government's argument  
24      is as well. I mean, that that particular entry  
25      doesn't necessarily establish that there was in

1 point of fact adjustments of the set points.

2 So --

3 MR. LINSIN: I agree.

4 THE COURT: But -- all right. You know,  
5 I'll extend to you the charge and the challenge to  
6 identify specifically Cahill's testimony before I  
7 make a final ruling. Okay. And I think if it's  
8 limited to the 2009 period, then I'm more inclined  
9 to allow it and then consider it a matter of  
10 weight.

11 MR. LINSIN: Your Honor, I don't mean to  
12 prolong this at all, but I don't understand that  
13 last point. Are you saying if it was -- if his  
14 comments were limited to the period of the  
15 inspection during 2009?

16 THE COURT: Yes.

17 MR. LINSIN: I see. All right.

18 THE COURT: Yes. That's what -- I didn't  
19 say that. That's what I meant to say. Yes.

20 MR. PERSONIUS: And, Judge, are you  
21 suggesting that if we can identify where it might  
22 be in the transcript, to order that part of the  
23 transcript? We can do that if that's helpful.

24 THE COURT: Yeah. I mean, whatever you  
25 can do. I mean, if it's transcript, if it's in



1       your notes or whatever. I mean, I need to know. I  
2       mean, I'll check my notes. You know, I haven't  
3       done that yet, so I'll go through what I've taken  
4       and we'll try to ferret it out. Okay.

5               MR. PERSONIUS: If you were Judge Elfvin,  
6       you would have every word down.

7               THE COURT: Don't I wish. Many a stories  
8       we could relate relating to that. Okay. That's  
9       been helpful to me. Thank you. I'll set you to  
10      the task and I'll do what I can with what I have.  
11      And I'll work with Michelle a little bit too.

12              All right. Chris, what do you think? Do you  
13      think the jury's going to want come back out?

14              COURT SECURITY OFFICER: I'm sure.

15              THE COURT: Okay. Good. Thanks.

16              (Jury seated.)

17              THE COURT: You don't know how glad I am  
18      to see you. Please have a seat.

19              Mr. Collins, you're not catching what everybody  
20      else has now, are you?

21              Okay. Thank you for coming back. Sorry for  
22      the delay. We actually have been working trying to  
23      work things out. I think we're ready to resume. I  
24      think we are at cross-examination of Mr. O'Connor.

25              The attorneys and parties are back present.

1 Jury's here, roll call waived.

2 Mr. Linsin, your witness, please.

3 MR. LINSIN: Thank you, your Honor.

4 CROSS-EXAMINATION BY MR. LINSIN:

5 Q. Good afternoon, Mr. O'Connor.

6 A. Good afternoon, Mr. Linsin.

7 Q. You testified on direct examination,  
8 Mr. O'Connor, about a number of the documents that  
9 were seized during the execution of the criminal  
10 search warrant at Tonawanda Coke on December  
11 17th, 2009, correct?

12 A. That's correct.

13 Q. Do you recall how long that the execution of  
14 the search warrant took on that day?

15 A. I can -- I can give you a fairly good  
16 representation. I think we arrived somewhere  
17 around 9:00 o'clock in the morning, about that  
18 time. And it was well after dark when we left. It  
19 was wintertime so it gets dark early. I think that  
20 we probably were gone from there around  
21 9:00 o'clock at night, something like that.

22 THE COURT: A 12-hour day?

23 THE WITNESS: Approximately at the plant,  
24 yes.

25 THE COURT: Thank you.

1 BY MR. LINSIN:

2 Q. And can you provide the members of the jury  
3 with an estimate of the volume of documents you  
4 seized from -- you and your colleagues seized from  
5 Tonawanda Coke that day?

6 A. Yes, I can. There were approximately 65 boxes  
7 worth of the documents, banker-size boxes.

8 Q. And you were asked some questions about  
9 particular folders and particular documents within  
10 those folders in your direct examination, right?

11 A. Yes.

12 Q. Now, those folders that you testified about  
13 held other documents too, didn't they?

14 A. They did.

15 Q. And there were many other folders seized during  
16 the search warrant, correct?

17 A. Yes.

18 Q. May I please have Government's Exhibit 115.09  
19 in evidence. I'm sorry. 115.07 first.

20 THE CLERK: Is that in evidence?

21 MR. LINSIN: It is -- I have it as in, I  
22 apologize. Yes. I believe.

23 THE COURT: 115.07?

24 MR. LINSIN: 115.07.

25 THE CLERK: Yes, it is.

1 THE COURT: Okay. You may publish. Thank  
2 you.

3 BY MR. LINSIN:

4 Q. All right. Thank you.

5 I believe you testified, Mr. O'Connor, that  
6 this -- you recognize this as a photograph of the  
7 east quench tower, number 2 quench tower at the  
8 Tonawanda Coke plant, right?

9 A. I do recognize it as that.

10 Q. Okay. And you did not take this particular  
11 photograph, but you did go and observe this quench  
12 tower during the course of your activities out  
13 there on December 17, correct?

14 A. Yes.

15 Q. All right. And do you recall how you entered  
16 the quench tower when you inspected it?

17 A. No, I don't.

18 Q. Could we go then to the next exhibit,  
19 Government 115.09, in evidence.

20 You recall testifying about this photograph  
21 during your direct examination, correct?

22 A. Yes.

23 Q. And is this substantially what you saw when you  
24 looked into quench tower number 2?

25 A. Yes.

1 Q. Now, when you went into quench tower number 2,  
2 was it obvious to you that these structures up here  
3 at the top were in existence? You could see them  
4 easily from the ground?

5 A. I could.

6 Q. And these -- all of these are -- are  
7 essentially 1-by-6 wooden slats. Would that be a  
8 fair summary?

9 A. I don't know the measurements of them. They  
10 were slats, yeah.

11 Q. And the light areas in between those slats is  
12 the sky, correct?

13 A. That's right.

14 Q. There's nothing up there other than those  
15 wooden slats and the structures that support them,  
16 correct?

17 A. Correct.

18 THE COURT: Okay. Let me just ask you  
19 this. When you talk wooden slats, are you talking  
20 about something similar to what's above the jury  
21 box there and the light for outside?

22 THE WITNESS: Similar.

23 THE COURT: Okay.

24 BY MR. LINSIN:

25 Q. Fair to say, they were rough wood rather than

1 finished wood, is that correct?

2 A. It would be an assumption.

3 Q. All right. Let's not assume. Were you able to  
4 just walk into this quench tower when you were  
5 there on December 17th?

6 A. Yes.

7 Q. And do you know what these -- what these pipes  
8 are that run across in this pattern inside the  
9 quench tower?

10 A. I don't know for a fact, but they carry the  
11 water to quench the coke.

12 Q. All right. With -- now, if we may move,  
13 please, to Government Exhibit 115.25.

14 Do you recall testifying that this was how the  
15 interior of the west quench tower, quench tower  
16 number 1, looked to you?

17 A. I recall testifying to that and to seeing that.

18 Q. All right. And same as with respect to quench  
19 tower number 2. Were you able to simply walk into  
20 quench tower number 1 and look up?

21 A. Yes.

22 THE COURT: How do you walk into those?

23 THE WITNESS: Your Honor, there is a set  
24 of railroad tracks where the quench car would roll  
25 in there. You can walk along those tracks.

1           THE COURT: It's not a walkway where you  
2 do that, it's the car tracks that you walk on,  
3 right?

4           THE WITNESS: Yes, sir.

5           THE COURT: Okay. Thank you.

6 BY MR. LINSIN:

7           Q. Well, let me go back if I can to just clarify.  
8 Do you remember whether the rail tracks ran all the  
9 way through quench tower number 2?

10          A. What I recall is one of the towers had tracks  
11 run all the way through and one of them didn't. I  
12 don't remember which was which.

13          Q. Okay. Fair enough.

14          May I please have Government Exhibit 120 in  
15 evidence.

16          Now, you were asked some questions about a  
17 couple of passages in this document, and I want to  
18 ask you a couple of preliminary questions and then  
19 get to this document in a little more detail.

20          In the course of your duties with the DEC, as  
21 an environmental conservation inspector and  
22 investigator, have you had occasion to investigate  
23 companies for issues related to environmental  
24 compliance?

25          A. I have.

1 Q. And how many years have you been doing that?

2 A. I've been a police officer with the department  
3 for 24 years. As a plain-clothes investigator for  
4 the last eight.

5 Q. Okay. And in the course of your duties, have  
6 you had occasion to investigate and learn how  
7 companies manage and account for the  
8 responsibilities of environmental compliance?

9 A. In a very general way.

10 Q. All right. If we could move, please, to the --  
11 first, the second page and then the third page of  
12 this document. Just as a set up.

13 Do you recognize this as the second page of  
14 this same business plan, sir?

15 A. I recognize it as belonging to that and the  
16 second page by its number.

17 Q. All right. And if -- the table of contents,  
18 the next page, please.

19 Now, you've reviewed this entire document or  
20 have you reviewed this entire document?

21 A. I've looked through the document.

22 Q. All right. And is this table of contents -- my  
23 only question -- I'm not going to quiz you on it,  
24 Mr. O'Connor.

25 A. I'm just trying to be accurate.



1 Q. I understand and I appreciate that.

2 Is this a fair summary of all of the topics  
3 that are covered in this business plan, this table  
4 of contents?

5 A. In order to answer that, I'd like to see the  
6 next page but I think yes, it looks like it ends  
7 there. I don't know if there's more --

8 Q. Could we see the next page, please.

9 A. I would say yes.

10 Q. All right. Okay. Now, in your experience in  
11 investigating other companies with respect to their  
12 management of environmental compliance  
13 responsibilities, it's accurate to say, isn't it,  
14 that companies have to make some accounting of the  
15 costs of complying with environmental  
16 responsibilities, don't they?

17 A. Yes.

18 Q. And those aspects for small companies or for  
19 large companies, those aspects of cost components  
20 and how you assess and how you weigh those have to  
21 be factored into a company's business plan, don't  
22 they?

23 A. I agree.

24 Q. If we could move, please, to page 16 of this  
25 exhibit anyhow. And just so we can see what --

1       enlarge just the text, please.

2           Do you recognize this as a portion of this  
3       business plan that talks about several aspects of  
4       the market analysis for the purpose of this  
5       business plan, correct?

6       A.   The page is titled market definitions, yes.

7       Q.   Well, enlarge it one more time, please.

8       A.   "Market Analysis." It wasn't on the previous.

9       Q.   Yes. And then several subparts in that  
10      discussion of the market analysis, correct?

11      A.   Yes.

12      Q.   And then the one section that you were asked  
13      about is actually the fourth section in this  
14      part -- in this section of the business plan,  
15      correct? There's industry analysis, correct?

16      A.   Yes.

17      Q.   And market segment -- what market segment this  
18      company finds itself in and then strengths and then  
19      weaknesses, correct?

20      A.   That's right.

21      Q.   And there is a discussion here about -- at the  
22      very bottom, if we could highlight the weakness  
23      section. I'm sorry. Enlarge is what I meant to  
24      say, please. All right.

25           Discussion about several factors that when you

1 talk about overall market analysis are assessments  
2 of weaknesses or challenges in that market  
3 analysis, correct?

4 A. Yes.

5 Q. All right. And it is true, isn't it, that  
6 businesses, especially manufacturing businesses,  
7 often encounter pressures and responsibilities for  
8 complying with the range of environmental  
9 obligations. Is that a fair statement?

10 MR. MANGO: Objection, your Honor. I  
11 don't know if there is a foundation for that  
12 question, manufacturing companies that -- the  
13 earlier questions were not focused on manufacturing  
14 companies. I'm just concerned there is no  
15 foundation for -- for these questions.

16 THE COURT: I mean, we've probably lost  
17 the question in the mix, but let's think about it  
18 in terms of foundation and reask a question.

19 BY MR. LINSIN:

20 Q. What types of companies -- pardon me.

21 In your work with DEC, what types of companies  
22 have you investigated with respect to environmental  
23 compliance?

24 A. I'm not sure if I understand exactly what you  
25 mean when you say "what types of companies."

1 Q. What -- what did these companies do? What --  
2 did they make products? Did they -- what kind of  
3 companies were they?

4 A. They would make products, sure.

5 Q. Manufacture products?

6 A. Yes.

7 Q. All right. So manufacturers, is that some of  
8 the companies that you had investigated in the  
9 past?

10 A. Yes.

11 Q. All right. And those companies, along with  
12 others, but manufacturers in particular have to  
13 account for and manage the responsibilities for  
14 complying with state and federal environmental  
15 responsibilities, correct?

16 A. It would be an assumption. I'm not a business  
17 person. I don't know the answer to that but --

18 Q. Okay. Let's go, please, to page 18 of the  
19 document and highlight the risks section.

20 THE COURT: Okay. And again, this is  
21 Bates number 18. It's paginated number 17.

22 MR. LINSIN: Yes. Thank you.

23 BY MR. LINSIN:

24 Q. So still within the market analysis section,  
25 there's a discussion here of different aspects of

1 business risks which are things companies have to  
2 take account of, correct?

3 A. Yes.

4 Q. All right. And under -- two items discussed  
5 under business risks and three under different  
6 types of environmental risks, correct?

7 A. Yes.

8 Q. All right. And it is true, is it not, that a  
9 manufacturer has to stay abreast of the legal  
10 responsibilities for environmental compliance, is  
11 that correct?

12 MR. MANGO: Objection, your Honor. His  
13 earlier answer, I believe, covers this where he  
14 said I'm not a business person and it would be an  
15 assumption.

16 THE COURT: I'll permit this, though.  
17 Overruled.

18 THE WITNESS: I don't feel like I know  
19 enough about business to adequately answer that.

20 BY MR. LINSIN:

21 Q. Well, let me ask then the last point here with  
22 regard to this final point under environmental  
23 risks, economic.

24 Is it your experience, Mr. O'Connor, that in  
25 order to comply with environmental

1 responsibilities, companies have to expend capital  
2 resources, sometimes significant capital resources  
3 in order to achieve that compliance, is that  
4 correct?

5 A. I could agree with that, yes.

6 Q. All right.

7 MR. LINSIN: Your Honor, I have nothing  
8 further. Thank you.

9 THE COURT: Okay. Mr. Linsin, thank you.  
10 Mr. Personius.

11 MR. PERSONIUS: Yes.

12 CROSS-EXAMINATION BY MR. PERSONIUS:

13 Q. Good afternoon, Mr. O'Connor.

14 A. Good afternoon, Mr. Personius.

15 Q. We've met before, correct?

16 A. We have.

17 Q. You had started out testifying, Mr. O'Connor,  
18 about how your involvement in this investigation  
19 started. Do you recall that?

20 A. I do.

21 Q. Okay. And as I understood your testimony, it  
22 was based upon a news article that you read, is  
23 that correct?

24 A. Yes.

25 Q. Do you remember when -- when it was that you

1 read this -- this news article?

2 A. It was in the paper and I read it that same day  
3 it was in. It was October 11th of 2009.

4 Q. Okay. And before that time you were -- you  
5 were not involved at all in an investigation of --  
6 criminal investigation of Tonawanda Coke, is that  
7 correct?

8 A. Yes.

9 Q. Okay. I felt like you paused.

10 A. I did.

11 Q. Okay. Had you -- I'm just going to ask it  
12 again.

13 Had you had any involvement as a criminal  
14 investigator with Tonawanda Coke prior to this date  
15 in October of 2009?

16 MR. MANGO: Your Honor, if we may approach  
17 the bench on this. There may be an issue to  
18 discuss.

19 THE COURT: Okay.

20 (Side bar discussion held on the record.)

21 THE COURT: Mr. Mango.

22 MR. MANGO: Yes, your Honor. This witness  
23 is sensitive to this question because there was --  
24 obviously, we know there was some PCB issue  
25 in 2007. And then there was some information that

1       came to the department in 2008, as well. And so --

2               MR. PERSONIUS: Is that why you think he  
3       paused?

4               MR. MANGO: Yes. That's definitely why he  
5       paused.

6               THE COURT: What did you just say? I'm  
7       sorry.

8               MR. PERSONIUS: Do you think that's why he  
9       paused?

10              MR. MANGO: Yes.

11              MR. PERSONIUS: Okay. I'll stay away from  
12       that.

13              THE COURT: Okay. We had talked about the  
14       PCB before.

15              MR. MANGO: Right. I just want to --  
16       good. Thank you.

17              MR. PERSONIUS: Thank you, your Honor.

18              (End of sidebar.)

19              THE COURT: Okay. Mr. Personius, I think  
20       you can resume, please.

21              MR. PERSONIUS: Thank you, Judge.

22       BY MR. PERSONIUS:

23       Q. What we've learned in this case is that  
24       in October of 2009 you were involved in certain  
25       interviews related to Tonawanda Coke.



1 A. Yes.

2 Q. Okay. And we know that, for example, on  
3 October 19th of 2009 you were involved in an  
4 interview of Larry Sitzman and Cheryl Webster.

5 Do you recall that?

6 A. I do.

7 Q. All right. And can you explain to us how --  
8 were you involved in setting up that interview?

9 A. I was.

10 Q. Okay. So after you read this news article, you  
11 did something that caused you to decide you should  
12 interview Ms. Webster and Mr. Sitzman?

13 A. There was a discussion with representatives  
14 from the Environmental Protection Agency and the  
15 U.S. Attorney's office and myself, and that's when  
16 we decided to set that meeting up.

17 Q. After you read the news article, who did you  
18 get in touch with then?

19 A. The U.S. -- the assistant U.S. attorney that's  
20 prosecuting the case, Aaron Mango.

21 Q. Okay. And as a result of that, a meeting was  
22 set up with someone from EPA?

23 A. Yes.

24 Q. And that gave rise to the -- these interviews  
25 being -- being set up with, for example,

1 Ms. Webster and Mr. Sitzman?

2 A. Yes.

3 Q. All right. Were you the one who set up the  
4 interviews with Ms. Webster and Mr. Sitzman?

5 A. I think I was. It would make sense that I, you  
6 know, phoned them, being that we're in the same  
7 agency, and set it up.

8 Q. Okay. And before that interview, did you have  
9 any knowledge as to what their role had been with  
10 Tonawanda Coke over the years?

11 A. Yes.

12 Q. Were you aware of this inspection that had  
13 taken place at Tonawanda Coke in April of 2009  
14 prior to October of 2009?

15 A. No.

16 Q. All right. Did you learn about that inspection  
17 through this interview process?

18 A. I'm going to back up just a little bit. I  
19 don't think I was aware of it before that time.

20 Q. Okay. And we know, too, there was an interview  
21 of Thomas Corbett from the DEC on October the 21st,  
22 which would have been two days later. Do you  
23 recall that?

24 A. I do recall that.

25 Q. Did you set that up also?

1 A. Yes.

2 Q. Okay. And I think what -- what you've told us  
3 is that as far as you're concerned -- I think I  
4 have this correct -- you were not coordinating your  
5 investigation with anybody on the civil side of the  
6 DEC?

7 A. That's right.

8 Q. All right. Or the civil side of the EPA, for  
9 that matter?

10 A. That's right.

11 Q. As far as whatever anybody else was doing, you  
12 don't have that knowledge?

13 A. Not the details.

14 Q. Okay. All right. Thank you.

15 Now, if we get back to the execution of the  
16 search warrant, that was on December 17th of 2009,  
17 is that correct?

18 A. It was.

19 Q. Were you the -- the lead agent or investigator  
20 on the search warrant?

21 A. I was not.

22 Q. Who was?

23 A. Well, there were several different EPA agents  
24 that were involved. There was an EPA case that we  
25 were assisting with. When I say "we," I mean DEC.

1 Special Agent Jeff Dirks was involved and Special  
2 Agent Brian Kelly was involved. Both are no longer  
3 with the agency, but it would have been one of  
4 those two would have been the case agent, lead case  
5 agent at that time.

6 Q. And at that time, Mr. Dirks and Mr. Kelly were  
7 with the EPA?

8 A. That's correct.

9 Q. Was a decision made at some point between  
10 mid-October of 2009 and mid-December of 2009 that  
11 EPA would take the lead on the criminal  
12 investigation?

13 A. Yes.

14 Q. Okay. All right. And it's customary when you  
15 have these types of investigations for DEC to work  
16 in cooperation with the EPA?

17 A. Yes.

18 Q. All right. Now, could we please have for  
19 identification Defendant's Exhibit SSS put up,  
20 Sheila?

21 Do you see on the screen a photograph?

22 A. I do.

23 Q. And it says at the lower right, Defendant's  
24 Exhibit SSS?

25 A. Yes.

1 Q. Okay. Do you recognize what's shown in that  
2 photograph?

3 A. It's an office at Tonawanda Coke Corporation.

4 Q. Okay. But you don't specifically recognize  
5 whose office that is?

6 A. Not from that perspective, I don't.

7 Q. Okay. You can take that down, Sheila.

8 Were you in Mr. Kamholz's office during the  
9 course of the search?

10 A. Yes, I was.

11 Q. Okay. But do you have a recollection of what  
12 his office looked like?

13 A. I do.

14 Q. Okay. Could you describe it for the jury,  
15 please?

16 A. It looked similar to that picture, but I  
17 couldn't say that it was for sure.

18 Q. Okay. When you walk into his office, he has  
19 two desks that butt up against each other?

20 A. Yes. There is a couple of different entrances  
21 to the office and that's why I wasn't sure. I  
22 recall that being set up that way.

23 Q. All right. And would it be fair to say that  
24 his office is not a palace?

25 A. Yes.

1 Q. Thank you. You were asked by Mr. Mango about  
2 two folders that were taken from Mr. Kamholz's  
3 office. Do you recall that?

4 A. I think he asked me about more than two  
5 folders, but he did ask me about two.

6 Q. Okay. Well, let me be specific the ones I want  
7 to refer to.

8 Do you remember there was a folder that  
9 contained documents from an information request  
10 that was made by the EPA in September of 2009?

11 A. I do recall that.

12 Q. And there were certain documents from that  
13 folder that you looked at and identified and we  
14 admitted into evidence, correct?

15 A. Yes.

16 Q. Now, can we agree there were a number of  
17 additional documents in that folder that you were  
18 not called upon to identify?

19 A. Yes.

20 Q. And therefore they're not part of the evidence  
21 in this case.

22 A. I know they are not part of the evidence from  
23 what was admitted through me.

24 Q. Okay. And then another folder that was shown  
25 to you that came from Mr. Kamholz's office was from

1 the September -- I'm sorry -- the April 2009  
2 inspection by the EPA and DEC at Tonawanda Coke?

3 A. I'm sorry. Could you repeat that again? I  
4 lost you.

5 Q. Do you remember there was another folder that  
6 you were shown by Mr. Mango that had documents in  
7 it from the April 2009 inspection at Tonawanda  
8 Coke?

9 A. Yes.

10 Q. And again, can we agree that there were other  
11 documents in that folder from that inspection that  
12 were not shown to you?

13 A. Yes.

14 Q. And that included notes that were taken by  
15 Mr. Kamholz? Or included notes?

16 A. Yes.

17 Q. You may not know whose notes they are.

18 Now, you also testified about Mr. Kamholz's  
19 response to this request for information by the --  
20 the EPA. Do you recall that?

21 A. I do.

22 Q. All right. And one of the documents that you  
23 identified from that request for information folder  
24 were -- that was taken from Mr. Kamholz's office  
25 were circular charts?

1 A. Yes.

2 Q. And do you have a recollection that generally  
3 the time period for those circular charts was from  
4 August and early September of 2009?

5 A. I'm not sure -- excuse me. I'm not sure what  
6 the dates on those charts were.

7 Q. Okay. Could we -- this is in evidence, Lauren.  
8 Please put up Government Exhibit 116.02.01.

9 This is one of the circular charts,  
10 Mr. O'Connor? It's a circular chart?

11 A. It is, yes.

12 Q. Lauren, could you make that center part bigger  
13 so we can get the date?

14 Do you see the date on there, Mr. O'Connor?

15 A. I do.

16 Q. September 8 of '09?

17 A. It is.

18 Q. And could we put up, Lauren, in evidence  
19 Government Exhibit 116.02.39.

20 Another circular chart, Mr. O'Connor?

21 A. Yes.

22 Q. Please make that bigger, Lauren. Thank you.  
23 And the date on that is August 1 of 2009?

24 A. Yes.

25 Q. Does that help refresh your recall --



1 A. It does, yes.

2 Q. Do you remember that as part of Mr. Kamholz's  
3 response to this EPA request for information, he  
4 produced circular charts for this time period?

5 A. That's what that folder indicated, that that  
6 was materials sent to the EPA in response, yes.

7 Q. Yes. And one of them was to provide copies of  
8 circular charts?

9 A. Yes.

10 Q. And his response went in -- Mr. Kamholz's  
11 response went in in early October of 2009, right?  
12 You don't recall that?

13 A. If I saw the shipping label, I would refresh my  
14 memory, but I maybe want to do that. I don't know.

15 Q. All right. I had the letter. I got to get my  
16 notes. You're right to do that because the date on  
17 the letter was wrong. I don't know if you remember  
18 that.

19 Lauren, this is in evidence. Would you please  
20 put up Government Exhibit 116.01.01 and make the  
21 label bigger, please.

22 Does that help you recall the date?

23 A. It does. The date of the shipment is reflected  
24 on that document and it says October 7th, 2009.

25 Q. 2009. Okay. Now, you testified also --

1           You can take that down, Lauren. Thank you.

2           -- that there were other circular charts that  
3       were found in Mr. Kamholz's office. Do you  
4       remember that?

5       A. Other than the two you just showed me?

6       Q. That set -- there was that set from August 1  
7       of 2009 to early September of 2009. The ones you  
8       just testified about, right?

9           Do you remember that?

10      A. I do.

11      Q. Okay. And then there was another small set of  
12      circular charts you testified about that were from  
13      April of 2009. Do you recall that?

14      A. I do.

15      Q. And that you indicated that those charts had  
16      also been found in Mr. Kamholz's office, correct?

17      A. Yes.

18      Q. Now, are you aware that as part of the  
19      April 2009 inspection that there was a request that  
20      certain circular charts from that inspection period  
21      be produced by Tonawanda Coke?

22      A. Not particularly. I reviewed that letter and  
23      those boxes and those documents, but I'm not sure  
24      the details of the request.

25           MR. PERSONIUS: Okay. Thank you.

1           Your Honor, can I have a minute, please?

2           THE COURT:    Sure.

3           MR. PERSONIUS:  Nothing further, Judge.

4           Thank you, Mr. O'Connor.

5           THE WITNESS:  Thank you, Mr. Personius.

6           THE COURT:    Okay.  Mr. Personius.

7           Mr. Mango, any redirect?

8           MR. MANGO:    No, thank you, your Honor.

9           THE COURT:    Okay.  Mr. O'Connor, you are  
10       excused.  Thank you.

11          THE WITNESS:  Thank you, your Honor.

12          MR. MANGO:    Your Honor, the government  
13       would call Daniel Heukrath.

14          Your Honor, I'd ask that Mr. O'Connor be  
15       allowed to remain in the courtroom now that his  
16       testimony is completed.

17          MR. LINSIN:   No objection, your Honor.

18          MR. PERSONIUS:  No objection, Judge.

19          THE COURT:    Okay.  Certainly.

20          We actually need to take a break for a few  
21       minutes, ladies and gentlemen.  Okay.  I know you  
22       haven't been here that long but as we've been  
23       working rather intensely here.

24          So let's take 10 minutes or so and we'll come  
25       back.

1 (Jury excused from the courtroom.)

2 THE COURT: Okay. Break time.

3 (Short recess was taken.)

4 THE COURT: Are we ready to go forward?

5 Chris, please.

6 (Jury seated.)

7 THE COURT: How is the temperature?

8 THE JURY: It's cold.

9 THE COURT: Okay. We're looking at the  
10 heat regulator. Thought we had it solved. I guess  
11 not. So we're going to work on it over the  
12 weekend. We'll get it under control. Thank you.  
13 Please have a seat.

14 Mr. Mango, are you ready?

15 MR. MANGO: We're ready, your Honor.

16 THE COURT: Let's call your next witness,  
17 please.

18 MR. MANGO: Yes, your Honor. Daniel  
19 Heukrath.

20 THE COURT: Okay. If you would approach  
21 the witness stand, I'll tell you when to stop.  
22 Right there. And face the jury, and I'll have you  
23 sworn.

24 D A N I E L J. H E U K R A T H, having been duly  
25 sworn as a witness, testified as follows:

1 THE COURT: Okay. Good afternoon.

2 THE WITNESS: Hello.

3 THE COURT: All right. Just a few  
4 preliminary instructions. And what I will ask you  
5 to do is speak at the microphone in the direction  
6 of the jury. You're here to testify for their  
7 benefit. If you speak in a conversational tone,  
8 the microphone should pick you up reasonably well.

9 THE WITNESS: Okay.

10 THE COURT: If you don't understand a  
11 question, ask whoever's asking you the question to  
12 repeat it.

13 THE WITNESS: Okay.

14 THE COURT: Try to be as succinct with  
15 your answers as possible. If you can answer it  
16 with a yes or no, try to do that. When you start  
17 volunteering information, that causes problems  
18 generally speaking.

19 If there's an objection, wait until I rule on  
20 the objection, then I will give you instructions.  
21 I'll tell you complete your answer, start it again,  
22 wait for the next question, et cetera. Okay?

23 THE WITNESS: Okay.

24 THE COURT: All right. I think you're  
25 going to carry pretty well. Just talk at the

1 microphone. State your name -- full name and spell  
2 your last name, please.

3 THE WITNESS: Daniel J. Heukrath.

4 H-E-U-K-R-A-T-H.

5 THE COURT: Okay. Your witness, Mr.

6 Mango. Thank you.

7 MR. MANGO: Thank you, your Honor.

8 DIRECT EXAMINATION BY MR. MANGO:

9 Q. Good afternoon, Mr. Heukrath. How are you?

10 A. Good.

11 Q. Can you tell the jury, are you currently  
12 employed?

13 A. Yes.

14 Q. And who are you employed with?

15 A. Tonawanda Coke.

16 Q. And when did you start working at the Tonawanda  
17 Coke facility?

18 A. When it first started in 1978.

19 Q. All right. And were you actually working at  
20 the site prior to 1978 --

21 A. Yes, I was, for Allied Chemical.

22 Q. Mr. Heukrath, I'm just going to ask you, just  
23 wait till I finish asking the question. It will be  
24 easier for Michelle here, the court reporter.

25 A. Okay.

1 Q. All right. What position do you currently hold  
2 at Tonawanda Coke?

3 A. A supervisor in coal handling.

4 Q. All right. How long have you been in that  
5 position?

6 A. Since Monday.

7 Q. Okay. And where were you before Monday?

8 A. I was in by-products, supervisor.

9 Q. And was there any reason given to you for your  
10 change from by-products supervisor to coal  
11 handling?

12 A. No.

13 Q. What are your job duties in coal handling?

14 A. I have to direct end loaders to pick up coal  
15 from the coal field, put it into a hopper, and the  
16 coal comes up into the building. And I position  
17 belts in order for this coal to go in certain bins  
18 where it's supposed to. At the same time I have to  
19 send the finished coal over into the oven coal bins  
20 where it's charged into ovens.

21 Q. All right. We will get there. You're familiar  
22 with that position, is that right?

23 A. Yes.

24 Q. You've done that in the past?

25 A. Yes.

1 Q. Can you tell -- actually, can you tell the jury  
2 what other positions you've worked at Tonawanda  
3 Coke and the approximate time periods that you  
4 worked in those positions?

5 A. Starting at the beginning I was a pusher  
6 operator, hourly pusher operator for about a year.  
7 Then I worked as a lab technician for about a year,  
8 sampling coal and coke. After that I went back to  
9 the battery as a pusher operator for about a year.  
10 After that I was a -- started breaking in as a  
11 general foreman on the battery. And I was a  
12 general foreman for most of the '80s and then  
13 possibly into the '90s. At some time during the  
14 '80s, from what I recall, I was breaking in as a  
15 by-products supervisor.

16 In 1989 I was in Toledo working for the company  
17 trying to solve some problems with the Toledo  
18 plant. In 1990 and '91 I was in Detroit, again  
19 working on problems with their coke ovens.

20 When I came back, I was working many different  
21 jobs. I was general foreman. I worked in coke  
22 handling. I worked in coal handling.

23 In about the mid '90s I was asked to work as a  
24 work practice plan teacher I guess you would say,  
25 to teach work practices and provide procedures for



1 the oven personnel.

2 After that, from what I recall, I was utility  
3 supervisor. I would fill in certain jobs on the  
4 battery. After the year, about 2000 I was the --  
5 what would you call it? Not the plant manager --  
6 assistant plant manager. And during the time from,  
7 say, 2000 to 2007 I was assistant plant manager.

8 And I also did work on oven walls for the  
9 company in Sloss, Birmingham. Did a little work in  
10 Empire Coke in Tuscaloosa, Alabama. Did some work  
11 in A.K. Steel during this time. Did some work in  
12 South Africa rebuilding oven walls, and did a  
13 little work in the Netherlands.

14 And then in 2007 I became the plant manager, in  
15 I think it was January. And then from January  
16 through March of 2009 I was the plant manager.

17 After that, they moved me to the personnel  
18 as -- human resources as a personnel director and  
19 safety director till September of 2009.

20 And then after that I was in coal handling as a  
21 coal handling supervisor. And then after that I  
22 think they moved me back to the ovens for a period  
23 of time during the summer, controlling the escania  
24 valves on the battery.

25 After that, back -- I don't know if it was coal

1 handling or back to the battery.

2 Q. Okay.

3 A. In summer of 2011 I was working in Erie Coke,  
4 Erie, Pennsylvania building oven walls. Then I  
5 don't know --

6 Q. That's okay.

7 A. I worked so many jobs, I can't remember after  
8 that.

9 Q. It's a very thorough recitation.

10 A. Came back and did something else.

11 Q. Okay. So let me ask you about -- you mentioned  
12 directly after becoming -- or after being a plant  
13 manager until March of 2009, then you went into  
14 personnel, was that the HR department?

15 A. Yes.

16 Q. Okay. Were you given a reason as to why you  
17 were taken out of the plant manager role?

18 A. No.

19 Q. Okay. How did that transition come up?

20 A. Mr. Crane just talked to me and said he wanted  
21 me to go to the personnel director's job.

22 Q. Okay. Was it -- did you have a choice in the  
23 matter?

24 A. No.

25 Q. Okay. So is it fair to say that

1 managerial-level employees get moved around at  
2 Tonawanda Coke?

3 A. Yes, they do.

4 Q. In any of your previous positions that you just  
5 went through, Mr. Heukrath, have you received any  
6 type of environmental training?

7 A. No.

8 Q. Any type of training involving hazardous waste?

9 A. No.

10 Q. Okay. Do you know what the term "K087" means?

11 A. No.

12 Q. Are you familiar, Mr. Heukrath, with the  
13 process of making coke at Tonawanda Coke?

14 A. Yes.

15 Q. All right. And do you know what the term  
16 "reversal" means?

17 A. Yes, I do.

18 Q. And can you tell the jury what you understand  
19 the term "reversal" means?

20 A. The reversal system has to do with heating the  
21 battery. And there's flues. There's 28 flues in  
22 each heating wall, and there are 61 heating walls.  
23 So you if you multiply 28 times 61, that's the  
24 number of flues in the battery.

25 And if you consider the battery flues as a

1 checker board, the black flues would burn for 20  
2 minutes, then at the 20-minute mark it would  
3 reverse over, and then the red flues would burn.  
4 And every 20 minutes this continually goes on day  
5 after day, hour after hour, and the gas reverses.  
6 It opens and closes the gas valves going to each  
7 flue.

8 Q. Okay. During a reversal what happens to the  
9 flow of coke oven gas to the ovens?

10 A. It stops periodically as the hydraulic pistons  
11 travel back and forth to open and close the valves.

12 Q. Does that cause any increase in the plant  
13 pressure?

14 A. Yes, it does, because the battery is no longer  
15 taking gas at that time.

16 Q. Okay. During your time as assistant plant  
17 superintendent and plant superintendent, I think  
18 you mentioned from 2000 to 2009?

19 A. Yes.

20 Q. Was there anything used in the by-products  
21 department to relieve pressure in the line?

22 A. There is a valve or a bleeder inside the  
23 by-products area that bleeds the excess gas.

24 Q. Okay. What did you call that? What was that  
25 known as?

1 A. As the bleeder.

2 Q. Okay. I'd like to pull up, your Honor,  
3 Government Exhibit 15.02.97 in evidence.

4 Mr. Heukrath, do you see that picture on your  
5 screen?

6 A. Yes, I do.

7 Q. Okay. What is that picture?

8 A. That's a picture of the bleeder.

9 Q. Okay. During your time as assistant plant  
10 superintendent and plant superintendent -- or  
11 assistant plant manager, I think you used the term,  
12 and plant manager, was this operational?

13 A. Yes, it was.

14 Q. Okay. Did you see it operate?

15 A. Yes, I did.

16 Q. Were you familiar with the operation of this  
17 bleeder?

18 A. Yes.

19 Q. What was the purpose of this bleeder?

20 A. It was to bleed, like I say, excess gas.  
21 Normally we have a certain plant pressure, what  
22 they call plant pressure, where we normally keep  
23 the gas pressure at, and anything over and above  
24 that set point would bleed.

25 Q. Okay. If something -- if the plant pressure

1       went above the set point, what would happen?

2               MR. LINSIN:  Objection, asked and  
3       answered.

4               THE COURT:  I'll permit it.  Overruled.

5               THE WITNESS:  What would happen?  The  
6       valve would open and gas would come out of the  
7       pipe.

8       BY MR. MANGO:

9       Q.  Okay.  When you -- when you -- when it would  
10      open and you would have gas come out of the pipe,  
11      would you be able to hear anything?

12      A.  Yes, if you were close.

13      Q.  Okay.  How about in the wintertime, did you  
14      ever see evidence of releases from the bleeder?

15      A.  Yes.

16      Q.  Okay.  What would you see evidence of?

17      A.  Sometimes it would be water droplets.  
18      Sometimes it would be naphthalene crystals if it  
19      were cold enough.

20      Q.  Okay.  Was there ever a period of time -- now,  
21      we're looking at this bleeder on the screen.  Was  
22      there ever a period of time that the bleeder was in  
23      a different location?

24      A.  Yes, it was.

25      Q.  Okay.  I'd like to pull up Government

1 Exhibit 50, your Honor.

2 THE COURT: Okay.

3 BY MR. MANGO:

4 Q. Which is in evidence. I would like to just  
5 zoom in actually there.

6 Okay. Mr. Heukrath, do you see -- if you use  
7 your finger and tap the screen. From looking at  
8 this picture first, can you tap the screen where  
9 the bleeder was between 2000 and 2009 that you were  
10 just talking about?

11 Or is it still in the same location?

12 A. Okay.

13 Q. Now, you mentioned the bleeder used to be in a  
14 different location. Can you tap the screen where  
15 the old location of the bleeder was?

16 All right. When do you recall -- if you can  
17 tell the jury, please, when do you recall seeing  
18 the bleeder in that old location?

19 A. From my -- from what I recall, it was in the  
20 '80s it was in that position.

21 Q. Okay. Why do you remember it was the '80s?  
22 Was there anybody in by-products that you recall at  
23 the time?

24 A. I had broken in with Kenny Burmel for a period  
25 of six to nine months in the by-products. And what

1 I recall it was during that time.

2 Q. Sometimes in the '80s?

3 A. Yes.

4 Q. So sometime after the '80s the old bleeder was  
5 removed and this new bleeder here was constructed?

6 A. Yes, it was.

7 Q. Between the time period of 2005 to 2009, what  
8 was the frequency with which the bleeder would  
9 release coke oven gas into the atmosphere?

10 A. It would depend on the set point.

11 Q. Okay. And what would happen to increase plant  
12 pressure in the line?

13 A. A reversal would increase the plant pressure, a  
14 charge would increase plant pressure.

15 Q. Did you ever notice releases from the bleeder  
16 during periods of reversal?

17 A. Yes.

18 Q. Are you familiar with the term "cogeneration"?

19 A. Yes.

20 Q. Okay. How about during periods of  
21 cogeneration, would the bleeder still release  
22 during reversals?

23 A. At times, yes.

24 Q. In your experience did you ever observe the  
25 bleeder release for longer than -- I'm sorry. Let



1 me ask it this way: How long would the releases  
2 relating to the reversals last?

3 THE COURT: Try that one again, please.

4 BY MR. MANGO:

5 Q. Yes. For the releases relating to reversals  
6 that you just discussed, how long did they last?

7 A. Generally about ten seconds.

8 Q. All right. And in your experience did you ever  
9 observe the bleeder release for longer than ten  
10 seconds?

11 A. It's possible, yes.

12 MR. LINSIN: Your Honor, I would just  
13 object to "it's possible". If the witness has a  
14 recollection, that's fine. But I don't know if --  
15 possibility is not a --

16 THE COURT: It's probably not responsive  
17 in a sense, so sustained. You can repute a question  
18 if you like.

19 BY MR. MANGO:

20 Q. Do you ever remember any times that the  
21 bleeder -- that you made observations that the  
22 bleeder released for longer than ten seconds?

23 A. That I can't recall.

24 Q. What was the typical set point for the bleeder  
25 between the period of 2005 and 2009?

1 A. Normally around 80 to 100 centimeters.

2 Q. Are you familiar with how the set point on the  
3 bleeder was raised or lowered?

4 A. Yes, I was.

5 Q. How often would the bleeder set point be  
6 changed in your experience?

7 A. Very rarely.

8 Q. And how would -- if you can tell the jury, how  
9 would the release point for the bleeder be  
10 adjusted?

11 A. There's chart, and this chart has a knob on it.  
12 And the chart has a pen and also a pointer. You  
13 would raise and lower this pointer on this circular  
14 chart that goes around. And it had gradients  
15 from -- had numbers on it from maybe zero to 200.  
16 And you would set this set point at, say, if you  
17 wanted it at 80, you would set it at the 80 mark.

18 Q. Okay. And was there anything else -- well,  
19 first, was that actual set point recorded on this  
20 circular chart?

21 A. No.

22 Q. Okay. Was there anything else that was  
23 recorded on the circular chart?

24 A. The actual plant pressure by the pen would be  
25 recorded on the chart.

1 Q. And what would happen if the pressure in the  
2 line went above the set point?

3 A. It would open the valve, the pneumatic valve,  
4 and it would bleed -- the gas would bleed to  
5 relieve the excess pressure to get it below the  
6 pointer set point.

7 Q. Okay. Now let's say in -- let me ask you for  
8 the year 2005. Do you remember seeing the bleeder  
9 release?

10 A. Yes.

11 Q. Okay. In the year 2006 do you remember seeing  
12 the bleeder release?

13 A. Yes.

14 Q. In the year 2007, do you remember seeing the  
15 bleeder release?

16 A. Yes.

17 Q. In 2008 do you remember the bleeder releasing?

18 A. Yes.

19 Q. In 2009 do you remember seeing the bleeder  
20 release?

21 A. Yes.

22 Q. Okay. Now we just went through the time period  
23 from 2005 to 2009. Can you tell the jury,  
24 Mr. Heukrath, approximately how many times in that  
25 time period you saw the bleeder release?

1 A. Thousands of times.

2 Q. Was the use of this bleeder reserved for only  
3 time of emergency?

4 A. No.

5 Q. Okay. During the period of 2005 -- Lauren, we  
6 can take that down. Thank you.

7 During the period of 2005 to 2009,  
8 Mr. Heukrath, were you ever in the coal field?

9 A. Yes.

10 Q. All right. And are you familiar with the  
11 drainage in the coal field?

12 A. Yes, I am.

13 Q. And during periods of heavy rain or snow melt,  
14 have you seen drainage from the coal field in  
15 that 2005 to 2009 time period?

16 A. Yes, I have.

17 Q. All right. And can you tell the jury where the  
18 drainage goes in the coal field?

19 A. It goes along side the, what we call Jamoke  
20 Road. There is a ditch, and this ditch -- the rain  
21 water would drain into this ditch, go in back of  
22 the shower house, and basically head down to the  
23 river in the ditch.

24 Q. The Niagara River?

25 A. Yes.

1 Q. Okay. So during the period of time you were  
2 plant manager, is that correct?

3 A. Yes.

4 Q. And what were your duties as plant manager if  
5 you can tell the jury?

6 A. Basically to keep the plant running, make sure  
7 it ran at a normal operation.

8 Q. As part of your job duties did you ever  
9 interact with a person known as Mark Kamholz?

10 A. Yes.

11 Q. Do you see Mr. Kamholz here in court today?

12 A. Yes, I do.

13 MR. MANGO: Your Honor, may the record  
14 reflect Mr. Kamholz has stood up and the witness  
15 has identified him?

16 THE COURT: The record will reflect the  
17 Defendant Mark Kamholz has been identified by  
18 Mr. Heukrath.

19 BY MR. MANGO:

20 Q. What is Defendant Kamholz's position, if you  
21 know, between that time period of 2005 to 2009,  
22 what was his position at Tonawanda Coke?

23 A. He was and always has been in charge of the lab  
24 and in charge of environmental things.

25 Q. All right.

1 A. His exact title I don't know.

2 Q. And when you were plant manager, who had the  
3 final say on environmental matters?

4 A. Mark did.

5 Q. In terms of the overall corporation, do you  
6 know if Defendant Kamholz had the final say on  
7 environmental compliance matters when you were  
8 plant manager?

9 A. Yes, he did.

10 Q. Were you ever asked to sign any documents by  
11 Defendant Kamholz while you were plant manager?

12 A. Yes, I was.

13 Q. What type of documents would you be asked to  
14 sign?

15 A. He would bring me a yellow paper or cardboard  
16 folder each month and had me sign that.

17 Q. When he brought you these documents, did you  
18 ever ask him any questions about signing them?

19 A. I think at one time I asked him what they were,  
20 but I don't really recall his answer. I was just  
21 told that I had to sign them because I was the  
22 plant manager.

23 Q. Okay. I'd like to pull up Government  
24 Exhibit 35, your Honor, in evidence.

25 Mr. Heukrath, take a look at your screen. Do

1       you see this document on your screen?

2       A.   Yes, I do.

3       Q.   Okay.  It's multiple pages.  If we can just  
4       flip through before I ask you questions.  That's  
5       page 2, page 3, page 4, page 5, and page 6.  Did  
6       you get to take a look at all those pages?

7       A.   Yes, I did.

8       Q.   All right.  Let's go back to the first page, if  
9       we could please, Lauren.

10       Okay.  There's a signature there for  
11       responsible official.  Do you recognize that  
12       signature?

13       A.   Yes, it's my signature.

14       Q.   Okay.  Do you recall now looking at this  
15       document, what it was -- what it is?

16       A.   No, I don't.

17       Q.   Have you ever heard of a Title V permit?

18       A.   No, I have not.

19       Q.   Okay.  Now, I've showed you Government  
20       Exhibit 35.  Do you know if you were asked to sign  
21       forms similar to Government Exhibit 35 during your  
22       time at Tonawanda Coke as plant manager?

23       A.   I don't understand the question.

24       Q.   All right.  I'll -- we'll just go quickly  
25       through them.  Government Exhibit 36, your Honor,

1       please in evidence.

2                   THE COURT:    Okay.

3       BY MR. MANGO:

4       Q.   Mr. Heukrath, do you see your signature on that  
5       page?

6       A.   Yes, I do.

7       Q.   Okay.   And if we flip through the pages, the  
8       questions I asked you about Government Exhibit 35,  
9       do they apply to Government Exhibit 36?   Do you  
10      have any recollection of this documents?

11      A.   No.

12      Q.   Let's look at Government Exhibits 37, please,  
13      in evidence.

14              Do you see your signature on this page?

15      A.   Yes, I do.

16      Q.   Okay.   Let's scroll through the pages, please.  
17      Okay.

18              Mr. Heukrath, any recollection of this  
19      document?

20      A.   No.

21      Q.   And Government Exhibit 38.   Similar form.   Do  
22      you see your signature there?

23      A.   Yes, I do.

24      Q.   Do you remember this document?

25      A.   No.



1 Q. Okay. Mr. Heukrath, did there come a time when  
2 you became concerned about benzene in the air?

3 A. I had a conversation with Mark soon after these  
4 newspaper articles in the Tonawanda News came out.

5 Q. Okay. Do you recall when that was?

6 A. I guess shortly before the warrant,  
7 December 17th. Somewhere in the fall of that year.

8 Q. Okay. Can you tell the jury what you talked to  
9 Defendant Kamholz about at that time?

10 A. I asked him about benzene release, where it  
11 comes from, how -- what is going on with it. And  
12 he basically said that there were no upper limits  
13 for benzene releases put forth by the government.

14 Q. Okay. So he told you that there was no upper  
15 limits?

16 A. Right.

17 Q. Was he referring to the Tonawanda Coke  
18 Corporation that Tonawanda --

19 A. Yes.

20 Q. Okay.

21 MR. MANGO: Your Honor, if I may have a  
22 moment, please?

23 THE COURT: Certainly.

24 BY MR. MANGO:

25 Q. Mr. Heukrath, just one question. Just to be a

1 clear, that's the criminal search warrant that was  
2 executed?

3 A. Yes.

4 Q. Just before this you had that conversation?

5 A. Yes, in the fall.

6 MR. MANGO: Thank you, your Honor. No  
7 further questions.

8 THE COURT: Okay, Mr. Mango, thank you.

9 MR. PERSONIUS: Your Honor, may I go  
10 first?

11 THE COURT: Yes, certainly.

12 MR. PERSONIUS: Thank you, Judge.

13 CROSS-EXAMINATION BY MR. PERSONIUS:

14 Q. Good afternoon, Mr. Heukrath.

15 A. How are you doing?

16 Q. Good. We'll try to get you out of here this  
17 afternoon.

18 A. That would be good.

19 Q. I don't blame you. I think you've indicated  
20 you started at Tonawanda Coke when?

21 A. In 1978 in February.

22 Q. And had worked for the prior owner before that?

23 A. Yes.

24 Q. How far back was that?

25 A. 1969 I started in the plant.

1 Q. Okay. So you've been at that same facility  
2 since 1969?

3 A. Yes.

4 Q. About 45 years?

5 A. About.

6 Q. So -- you don't look old enough to be able to  
7 say that. But there are some tanks -- do you  
8 remember some tanks called the Barrett tanks?

9 A. Yes.

10 Q. Okay. And did those tanks exist when the  
11 grounds were owned by the prior company, by Allied?

12 A. Yes, they did.

13 Q. All right. And do you know whether or not  
14 those tanks were used at all once Tonawanda Coke  
15 took over the property?

16 A. To my recollection they were never used by  
17 Tonawanda Coke.

18 Q. All right. And were you at Tonawanda Coke in  
19 the summer of 2008 when there was a fire near these  
20 tanks?

21 A. Yes, I was.

22 Q. Did you actually witness the fire?

23 A. I didn't witness the start, but I got there  
24 when it was undergoing, yes.

25 Q. When it was ongoing?

1 A. Yes.

2 Q. Were you involved in trying to put it out?

3 A. Yes, I was.

4 Q. All right. Do you know how it started?

5 A. I didn't see it start or anything like that,  
6 but I had heard --

7 Q. Well, you probably shouldn't get into what you  
8 heard. You didn't see it start?

9 A. I didn't see it start, no.

10 Q. When you got there, there was already a fire?

11 A. Yes.

12 Q. Where was the fire when you got there?

13 A. There was one large tank, and there was a small  
14 brick building in front of this tank on the west  
15 side of it. And this fire -- the fire was around  
16 this brick building going from the road down to  
17 this brick building and in the west side of this  
18 tank.

19 Q. Okay. Was the fire inside the tank or outside?

20 A. No, outside.

21 Q. It was outside?

22 A. Outside.

23 Q. And how many tanks were there?

24 A. There was the large one, and then there was one  
25 to the north of it, and then there was some other

1       ones, I don't know how many, maybe two or three, a  
2       little bit east of that.

3       Q.   All right.   So there were several tanks there?

4       A.   Yes.

5       Q.   Okay.   And did the fire department eventually  
6       have to be called?

7       A.   Yes, it did.

8       Q.   Do you remember how long it took to actually  
9       put out the fire?

10      A.   To me it felt like hours.   I'm not really sure  
11      exactly how long it did take.   We did try putting  
12      it out ourselves.   We have a fire truck.

13      Q.   Once the fire companies got there, do you  
14      remember how long it took?

15      A.   Like I say, time-wise with everything going on,  
16      I couldn't really put a time on it, no.

17      Q.   And during the period that the fire was ongoing  
18      until it got put out, did you remain in the area?

19      A.   Yes, I did.

20      Q.   Did you observe the fire as it related to the  
21      tanks that were there?

22      A.   Yes, I did.

23      Q.   And did the tanks have a coal-tar-like material  
24      inside them, do you know?

25      A.   That I don't know.

1 Q. All right. Did you notice anything seeping out  
2 of the tanks during the fire?

3 A. No.

4 Q. And were you observing that? Were you in a  
5 position to notice it?

6 A. I walked around the side of the tank, and there  
7 was nothing coming out or leaking out, no.

8 Q. If there had been tons of tar coming out of  
9 those tanks, do you think you would have noticed  
10 that?

11 A. Yes.

12 Q. You didn't see that?

13 A. No.

14 Q. Now, did there come a time where one or more of  
15 those tanks were taken down?

16 A. Yes.

17 Q. Okay. Do you remember when that happened?

18 A. From what I recall it was after the fire.

19 Q. After the fire?

20 A. Yes.

21 Q. Okay. There are two quench towers at Tonawanda  
22 Coke?

23 A. Yes.

24 Q. Okay. And you've talked to the government a  
25 number of times about these quench towers, right?

1 A. I talked to the government?

2 Q. The investigators when you've been interviewed.

3 A. Yes.

4 Q. And you testified in the -- you've testified in  
5 the grand jury also?

6 A. Yes.

7 Q. A couple of different times?

8 A. Yes.

9 Q. And do you have -- from your time at the  
10 facility, do you have some knowledge as to the  
11 usage, the relative usage of the two quench towers?

12 A. Somewhat, yes.

13 Q. Okay. Let's first orient ourselves. The  
14 jury's heard this by now thousands of times, but  
15 there are two tanks, right?

16 A. Two towers, yes.

17 Q. Two towers. And the one to the west is called  
18 tower number 1?

19 A. One.

20 Q. And the one to the east is --

21 A. Tower number 2.

22 Q. Now, in your experience between 2005 and 2009,  
23 are you able to tell us what the relative usage of  
24 those two quench towers was?

25 A. Not really, no.

1 Q. All right. Do you remember there was a period  
2 of time that quench tower number 1 was out of  
3 service?

4 A. Yes, I do.

5 Q. Okay. And was that for a period of years?

6 A. From what I recall it was several years, yes.

7 Q. And did that overlap into the period '05 to  
8 '09?

9 A. Yes.

10 Q. Do you remember what years it was?

11 A. No.

12 Q. Okay. Do you remember how many of the years  
13 between '05 and '09 that tower number 1 was out of  
14 service?

15 A. From what I said, two years.

16 Q. Two years. And what was the reason that tower  
17 number 1 was out of service?

18 A. From what I recall, they had stopped or plugged  
19 off the outlet of the sump for that tower so that  
20 no water would go down to the river. None of the  
21 quench water would go down to the river.

22 Q. And tower number 1 sat in that condition, I  
23 think we could call it a lengthy period of time?

24 A. Yes.

25 Q. And eventually were steps taken to address



1       that -- that tower so it could be used again?

2       A.   Yes.

3       Q.   Okay.  And do you know what the reason was that  
4       that was done?

5       A.   We wanted to replace the quench tracks, and in  
6       order to do that you would need two towers  
7       operational.

8       Q.   Okay.  I think you have to tell the jury,  
9       please, what the quench tracks are.

10      A.   The quench tracks go between the towers and I  
11      guess in front of the battery.  What we do is we  
12      push coke out of the battery into what's called the  
13      hot car.  And the hot car is like a train with a  
14      wagon on it.  It travels between -- once you catch  
15      an oven, you have red hot coke in the hot car, and  
16      you take it to either number 1 or number 2 tower to  
17      be quenched, so that the hot coke gets quenched.

18      Q.   All right.  And this -- this issue with the  
19      tracks, did that relate to both of the towers or  
20      one of the towers where the tracks had to be  
21      repaired?

22      A.   The whole set of tracks had to be repaired,  
23      yes.

24      Q.   Because of that there was somehow a need to fix  
25      tower number 1 so it worked again?

1 A. Yes.

2 Q. And during -- after tower number 1 was fixed so  
3 it was working again, did you then have to fix the  
4 tracks in front of tower number 2?

5 A. Yes, we did.

6 Q. So you had to use tower number 1?

7 A. Yes.

8 Q. Do you remember roughly when this happened?

9 A. 2008. The year of 2008.

10 Q. And so should we understand that for at least a  
11 period of a couple years before that that tower  
12 number 1 was not working?

13 A. It was not, no.

14 Q. Okay. Now, after you had tower number 1  
15 working, then tower number 2 started to work again?

16 A. Number 2 always worked unless we were changing  
17 the tracks inside the tower.

18 Q. I misspoke. Once the tracks were fixed, did  
19 Tonawanda Coke start using tower number 2 again?

20 A. Yes, they did.

21 Q. This would be in 2008?

22 A. Yes.

23 Q. And at that point then number 1 and number 2  
24 were working sometime in 2008?

25 A. Yes.

1 Q. All right. And after that time do you recall  
2 how often 2 was used as compared to 1?

3 A. I would have to say I don't recall.

4 Q. Okay. All right. Do you remember at some  
5 point in time that Mr. Kamholz gave you an  
6 instruction that tower number 1 should not be used  
7 more than 10 percent of the time?

8 A. Yes, he did.

9 Q. Do you remember when he told you that?

10 A. Not positively when. I think it was some time  
11 during the year 2008.

12 Q. Okay. And do you know if that instruction was  
13 followed after he gave it?

14 A. I'm not really sure.

15 Q. Now, as far as the pressure relief valve or the  
16 bleeder is concerned, you talked about the changing  
17 of the set point?

18 A. Yes.

19 Q. Okay. And that there's -- the jury again has  
20 heard about this -- there is a green building or  
21 shack that has a little recorder device in it?

22 A. Yes.

23 Q. That's where you changed the set point?

24 A. Yes.

25 Q. In your experience who -- who is involved in

1 changing that set point for the -- for the pressure  
2 relief valve?

3 A. Normally it would be the by-products supervisor  
4 on recommendation of the boiler house operator.

5 Q. Okay. Would there be others that would get  
6 involved in that decision?

7 A. The plant manager would have some say in it  
8 too.

9 Q. And there were times when you had some say in  
10 that?

11 A. Yes.

12 Q. And would there be circumstances that would  
13 cause that set point to be changed that you're  
14 familiar with?

15 A. Yes, there was. If there were problems with  
16 the boiler, they may need excess pressure, they may  
17 want to raise the set point so that more pressure  
18 would go down to the boiler house to burn rather  
19 than natural gas.

20 Q. All right. And as far as the release of that  
21 valve was concerned, were there factors that would  
22 affect how often that valve would release?

23 A. Yes.

24 Q. In other words, conditions at the plant?

25 A. Yes.

1 Q. Weather? Whether it's summer or winter?

2 A. Yes.

3 Q. Would you explain to the jury, if you could,  
4 please, what some of those conditions were that  
5 would affect how frequently the valve released?

6 A. Reversals, it's possible for the valve to  
7 release more often. The production rate, if you  
8 charged more ovens than at a lower rate, it's  
9 possible for this pressure relief valve to go off.

10 Q. And in turn, if you were at a lower level of  
11 production that would affect the pressure in the  
12 gas line?

13 A. Yes.

14 Q. And could mean that the valve would release  
15 less often?

16 A. Yes.

17 Q. What other factors?

18 A. Also cogen, which is an electrical generator we  
19 used run by steam. And the boiler that puts out  
20 the steam is run by gas. And during times of cogen  
21 you would need excess steam, which means you need  
22 excess gas to run cogen.

23 Q. Do you remember when the cogen system was in  
24 operation at Tonawanda Coke?

25 A. No, I don't.

1 Q. All right. And whatever that period was then,  
2 is it your testimony the boiler would need more  
3 gas, so the pressure relief valve would release  
4 less often?

5 A. Yes.

6 Q. Can you think of other -- we talked about the  
7 weather. Is weather somehow a role in how often  
8 that valve would release?

9 A. Normally in the wintertime, again, the  
10 wintertime we use steam in the plant to warm  
11 things, to keep things warm, so the boiler would  
12 put out more steam in the wintertime, so it would  
13 need more gas in the wintertime.

14 Q. And would the pressure in the gas line be  
15 effected by the kind of coke that was being  
16 produced?

17 A. Yes, it would.

18 Q. There's -- the jury I think has heard this.  
19 There's two different kinds of coke?

20 A. Yes.

21 Q. Would you briefly explain that for the jury?

22 A. We have foundry coke, which is our major  
23 product, and foundry coke is sold by size, the  
24 foundry coke. The larger it is, the more money you  
25 would make off a larger-size coke. And the foundry

1 coke is used in the foundry to actually go to  
2 our -- the people we sell the coke to to heat  
3 foundries and melt steel to make engine blocks and  
4 that type of thing.

5 Q. All right. And so that the jury understands  
6 this, how does the type of coke that's being  
7 produced, how does that affect the pressure in the  
8 gas line?

9 A. The foundry coke doesn't give out as much gas  
10 as furnace or industrial coke. In fact, industrial  
11 coke would give out twice -- just about twice the  
12 amount of gas that foundry coke would.

13 Q. And did Tonawanda Coke produce more of the  
14 foundry than the furnace coke?

15 A. No, they produced -- yes, they did, more  
16 foundry than furnace, yes.

17 Q. Do you remember what the relative percentage  
18 was?

19 A. No.

20 Q. Okay. And with the foundry coke it would be  
21 less pressure in the gas line again?

22 A. Yes, there would.

23 Q. That would affect how frequently the valve  
24 would release?

25 A. Yes.

1 Q. Now, you mentioned that you had a conversation  
2 with Mr. Kamholz about the release of benzene after  
3 you read something a newspaper article?

4 A. Yes.

5 Q. Okay. And this was sometime around the time of  
6 the execution of the search warrant?

7 A. Yes, I think it was before it.

8 Q. Right. And that warrant was executed in  
9 December of 2009?

10 A. Yes.

11 Q. So would this have been the fall or early  
12 winter of 2009?

13 A. Yes.

14 Q. And he made -- you remember he made a comment  
15 to you that had something to do with the amount of  
16 benzene that was released was something that was  
17 not controlled? Or there was no limit on the  
18 amount of benzene you released?

19 A. Yes.

20 THE COURT: Ask a full question, please.

21 BY MR. PERSONIUS:

22 Q. Okay. Do you remember that Mr. Kamholz made a  
23 comment about there not being a limit on the amount  
24 of benzene that would be released?

25 A. Yes.



1 Q. And do you remember more about that  
2 conversation?

3 A. We talked about going to the coalition meeting.  
4 There were coalition meetings. I don't remember  
5 when they were, but they were in the paper for the  
6 public to attend. And we talked about going to  
7 them. I was interested in going to them, but I  
8 didn't know whether I should or not.

9 Q. Right.

10 A. So I did not.

11 Q. You ended up not going?

12 A. No.

13 Q. When you had the conversation about these --  
14 the release of benzene, did you talk about  
15 particular release points at the facility?

16 A. I think he was -- from what I recall he was  
17 talking about the quench tower.

18 Q. The quench tower?

19 A. And nothing else -- and also about the AC  
20 building, coming out of the top of the AC building.

21 Q. What's the AC building?

22 A. AC building is where they have the weak liquor  
23 still that we send the weak liquor through to scrub  
24 the ammonia.

25 Q. All right. Now, there is -- there's a concrete

1 pad that Tonawanda Coke has out by the coal fields?

2 A. Yes.

3 Q. And you have a recollection of what that was  
4 used for by Tonawanda Coke before the -- the search  
5 warrant in 2009?

6 A. It was used to store and mix tar.

7 Q. Okay. And where did that tar come from that  
8 was mixed and stored on there, do you remember?

9 A. Some of it came from Bethlehem Steel in  
10 truckloads where they dumped it on the pad, and it  
11 was mixed with coal already from Bethlehem, but we  
12 may have mixed more of it. Sent it through a pug  
13 mill, what they call a pug mill, which is just a  
14 grinding machine, and sent it up into the coal  
15 handling building.

16 And other times the tar would come from the tar  
17 box on Broadway. An end loader would pick it up on  
18 Broadway, take it around to the pad where it would  
19 be mixed with coal, and sent up to the coal  
20 handling.

21 Q. Now, you were asked by Mr. Mango about some  
22 certifications that -- some documents you signed?

23 A. Yes.

24 Q. And they were put up on the screen so you could  
25 look at those?

1 A. Yes.

2 Q. At the time that Mr. Kamholz asked you to sign  
3 those documents, were you plant manager?

4 A. Yes, I was.

5 Q. Okay. And you understood as plant manager that  
6 you had certain responsibilities?

7 A. Yes.

8 Q. Did you understand that the reason you were  
9 being asked to sign those was because you were  
10 plant manager?

11 A. Yes.

12 MR. PERSONIUS: Okay. Your Honor, may I  
13 have a minute, please?

14 THE COURT: Certainly.

15 MR. PERSONIUS: Your Honor, we have no  
16 further questions. Thank you, Mr. Heukrath.

17 THE COURT: Okay, Mr. Personius, thank  
18 you.

19 Mr. Linsin.

20 MR. LINSIN: Thank you. May I proceed,  
21 your Honor?

22 THE COURT: Certainly.

23 CROSS-EXAMINATION BY MR. LINSIN:

24 Q. Good afternoon, Mr. Heukrath.

25 A. Hello.

1 Q. How are you doing?

2 A. Good, good.

3 Q. About to be a little better? Just a couple  
4 questions, please.

5 I tried to jot down all of the various  
6 positions you had worked in while you were with  
7 Tonawanda Coke. I think I got most of them, but  
8 can you tell us specifically with regard to the  
9 by-products department, what period of time did you  
10 work directly in the by-products department? And  
11 let me make it hopefully a little easier.

12 Between 2005 and 2009, did you work in the  
13 by-products?

14 A. No, I did not.

15 Q. All right.

16 MR. LINSIN: I have nothing further, your  
17 Honor. Thank you.

18 THE COURT: Mr. Linsin.

19 MR. LINSIN: I could go on.

20 THE COURT: I wonder if we should put that  
21 to a vote.

22 Anything, Mr. Mango?

23 MR. MANGO: Yes, your Honor. Thank you.

24 THE COURT: That's a tough act to follow.  
25 You better be in line here.

1 MR. MANGO: That was.

2 REDIRECT-EXAMINATION BY MR. MANGO:

3 Q. Mr. Heukrath, good afternoon again. During  
4 your time as plant -- assistant plant manager and  
5 plant manager, were there times that you were in  
6 by-products?

7 A. Yes.

8 Q. Okay. I'd like to pull up Government  
9 Exhibit 125.04, your Honor.

10 If I could just have a moment I believe that is  
11 in evidence. Yes. And ask that be published.

12 THE COURT: Yes, I'm sorry.

13 BY MR. MANGO:

14 Q. Thank you. Mr. Heukrath, if you could, you  
15 talked about the fire around some Barrett tanks?

16 A. Yes.

17 Q. Okay. During the fire -- could you tap the  
18 screen to indicate the tank that you walked around?

19 All right. Now, do you see this tank in the  
20 background back there?

21 A. Yes.

22 Q. During the fire did you make any observations  
23 about that area in the background that stands out  
24 in your mind?

25 A. No.

1 Q. I guess the question is, do you remember making  
2 any observations about that area? Did you notice  
3 it?

4 A. No, I didn't.

5 MR. MANGO: Your Honor, if I may have a  
6 moment, please?

7 THE COURT: Sure.

8 MR. MANGO: Thank you.

9 BY MR. MANGO:

10 Q. Mr. Heukrath, when you were asked about a  
11 statement being made to you about usage of a quench  
12 tower 10 percent of the time --

13 A. Yes.

14 Q. -- had you ever heard that prior to what -- you  
15 believe that was in 2008?

16 A. I believe it was in 2008, yes.

17 Q. Had you ever heard that prior to that time?

18 A. No.

19 Q. And during the time of 2005 to 2009 when you  
20 would have been assistant plant manager and plant  
21 manager, you had opportunity to be in the  
22 by-products department?

23 A. Yes.

24 Q. And during those years, as we discussed, every  
25 year you observed the bleeder go off?

1 A. Yes.

2 Q. And regardless of the conditions you went  
3 through during cross-examination, summer, winter  
4 production rate, cogeneration, kind of coke, it's  
5 your testimony here that in that time period you  
6 saw the bleeder release thousands of times?

7 A. Yes.

8 MR. MANGO: Nothing further, your Honor.

9 THE COURT: Thank you, Mr. Mango.

10 MR. PERSONIUS: Your Honor, I have nothing  
11 further.

12 THE COURT: Okay, Mr. Personius.

13 MR. LINSIN: Nothing further, your Honor.  
14 Thank you.

15 THE COURT: Okay. All right.

16 Mr. Heukrath, thank you very much. You're free to  
17 go, sir.

18 THE WITNESS: Thank you.

19 THE COURT: Okay. Mr. Mango, what do you  
20 have in store for us next?

21 MR. MANGO: Well, if I could have a  
22 moment, your Honor, just to converse -- there is a  
23 witness. I just want to converse and see if you  
24 want us to call our next witness.

25 THE COURT: I do, but on Monday.

1 MR. MANGO: That would be perfect, your  
2 Honor.

3 THE COURT: Does that work from  
4 everybody's standpoint? How about you, ladies and  
5 gentlemen? Do you think you can handle a Monday  
6 witness? Okay.

7 All right. So week three comes to an end I  
8 guess. Thank you for your attention. I know you  
9 worked very hard. We, again, appreciate that.

10 So, we're going start probably about  
11 10:00 o'clock on Monday. So we'll give you some  
12 time to recover. And please keep your minds open.  
13 Don't discuss the case. Don't do anything with  
14 respect to tapping into social media and the  
15 Internet and the investigations. Stay away from  
16 any subject matter that might relate to this kind  
17 of case. Keep your minds open, please. And  
18 remember that common sense, experience, and  
19 intelligence that you would need to apply to  
20 resolving the fact issues, you will get them. And  
21 it will be your job to resolve the fact issues and  
22 determine whether the government has satisfied its  
23 burden beyond a reasonable doubt. We're not there  
24 yet. We're still in the government's case. It has  
25 the burden of proof. The defendants are presumed



1 innocent until proven guilty, if that does occur by  
2 the proof standard beyond a reasonable doubt.

3 Okay.

4 You've probably heard that a few times, but  
5 very important, because this is a very important  
6 case. And, again, we appreciate it very much. We  
7 will see you on Monday. We hope you have a great  
8 weekend. Be safe. Be careful. And we'll see you  
9 at what time on Monday?

10 THE JURY: 10:00 o'clock.

11 THE COURT: Okay. Thank you very much.

12 (Jury excused from the courtroom.)

13 THE COURT: Okay. We made it. The  
14 messenger cometh. I have some proposed jury  
15 charges for you to take a look at.

16 MR. MANGO: Great.

17 THE COURT: Thank you for your  
18 cooperation. I guess you're tasked with getting  
19 the information.

20 MR. LINSIN: We have actually requested  
21 the transcript be prepared, your Honor. I think  
22 that would be the easiest way to resolve this, and  
23 I know it is a burden. I apologize for the burden,  
24 but we believe it's an important issue. We've  
25 reviewed our notes, but I think the transcript will

1 be the cleanest way to do this.

2 THE COURT: Okay.

3 MR. PERSONIUS: And, Judge, what I  
4 remember, if you may recall is I took the logbook  
5 that Mr. Mango had used, and I asked Mr. Cahill if  
6 there was more than that one entry for change in  
7 the valve. You said he can do that during the  
8 break. It was during that break that he looked at  
9 that and said there were two entries in there. It  
10 was after that that I asked him that question about  
11 not making entries in the book. That's what I  
12 recall. I thought maybe you would remember that --  
13 help you remember that. We'll get the transcript.

14 THE COURT: That will help I think. Okay.  
15 Any other issues?

16 MR. MANGO: No, your Honor.

17 MR. PERSONIUS: I don't think so, Judge.

18 MR. LINSIN: No. No, your Honor, I don't  
19 believe so.

20 THE COURT: Okay. Mr. Moeller, would you  
21 mind distributing that? And is the proposed  
22 verdict form there too?

23 LAW CLERK: Yes.

24 MR. LINSIN: I don't mean to stop this  
25 process, but just in terms of preparation for next

1 week, obviously we will wait until the government  
2 rests before making any submission. But does the  
3 Court have a sense -- assuming they rest sometime  
4 Monday morning, what your preferences would be in  
5 terms of scheduling, review of those issues.  
6 Essentially what I'm trying to grapple with is how  
7 we will deal with the 29 issues, but also when we  
8 would be beginning to present evidence so we can  
9 plan accordingly.

10 THE COURT: Okay. Well, if we assume that  
11 you finish with the government's last witness and  
12 it rests, right?

13 MR. LINSIN: Is that an accurate --

14 THE COURT: You have two witnesses or one?

15 MR. MANGO: We had an additional witness  
16 here in the event we needed to fill some time.  
17 What we're going to do is we'll talk, your Honor.  
18 I expect either one or two, definitely one. If --

19 MR. PIAGGIONE: It would not be long.

20 MR. MANGO: It would not be long, but it  
21 would be nice now to talk though and make sure  
22 we've covered everything we need to cover. But we  
23 expect one or two Monday morning.

24 THE COURT: Well, what if we finished up  
25 Monday morning, had the arguments on Rule 29, and

1 then started Tuesday morning with the defense case?

2 I mean --

3 MR. LINSIN: That would be fine. I  
4 believe we'd been prepared then at that time to  
5 make the submission at that time. What I'm trying  
6 to assess is how -- we can work with that schedule.

7 THE COURT: Well, tell me. I mean, work  
8 with me, because we --

9 MR. LINSIN: I just want to provide the  
10 Court -- I want to make sure -- we do believe there  
11 are some significant issues here. We're trying to  
12 capture them in this written submission, and I was  
13 hoping to ensure the Court had adequate time to  
14 review that submission in assessing the ruling.  
15 That is really what I'm -- the only reason I'm  
16 asking. So, we'll be prepared to start Tuesday  
17 morning. But that is -- that is the -- that is the  
18 issue. It would have been a little cleaner  
19 obviously if the government had rested today, but  
20 so be it.

21 THE COURT: Well, are you telling me that  
22 based on your assessment of what you're going to  
23 submit and argue that I may need more than an  
24 afternoon?

25 MR. LINSIN: No, your Honor. We're trying

1 to keep this short. And all I wanted to make sure  
2 of was that the submission plus the argument was  
3 something we -- the Court would have adequate time  
4 to consider. The submission I believe is going to  
5 be under ten pages. I don't think that would --

6 THE COURT: Okay. Well, I mean, very  
7 honestly, let's look at that schedule. And I mean,  
8 if it appears as if I'm going to need more time,  
9 I'm going to take it, I mean, whatever it takes to  
10 make sure that we're comfortable with getting the  
11 Rule 29 resolved. And, you know, if it means we  
12 put off proof, if that's the case, then we will.  
13 I'm not going to rush it. I think you don't want  
14 me to. I can't predict, frankly -- you know,  
15 obviously, I mean, if you want me to decide it now  
16 without submissions --

17 MR. LINSIN: I'm not trying to complicate  
18 this, your Honor. I'm happy to proceed on the  
19 basis the Court's suggested.

20 THE COURT: I know. And, I mean, a lot  
21 has obviously gone into this. I think we can work  
22 with that schedule, and if we have to make some  
23 adjustments, we will.

24 We need to have a charge conference as well.  
25 We're going to talk about that, but I think one

1 step at a time. And let's do the Rule 29. Let's  
2 make sure that's behind us, and that everybody is  
3 comfortable with it, which means I've got to have  
4 enough time for it. But I think I'll be  
5 comfortable with it. And ten pages I know I can  
6 get through, all right? Okay. Anything?

7 All right. Last chance.

8 MR. LINSIN: I'm not touching it, your  
9 Honor.

10 THE COURT: That's the doctrine that  
11 applies on Fridays. Okay. Thank you very much.  
12 And I say this with some reservation, I look  
13 forward to seeing you on Monday.

14 MR. LINSIN: Thank you, your Honor.

15 \* \* \* \* \*

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I certify that the foregoing is a  
Correct transcription of the proceedings  
Recorded by me in this matter.

s/Michelle L. McLaughlin  
Michelle L. McLaughlin, RPR  
Official Reporter  
U.S.D.C., W.D.N.Y.